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The right of doctors to strike in Serbian legislation

Право лекара на штрајк у српском законодавству

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The right of doctors to strike in Serbian legislation

Право лекара на штрајк у српском законодавству

SUMMARY

Doctors as health care providers have the right to exercise and protect their labor rights, including the right to strike, and citizens have the right to health. Does exercising the right to strike call into question medical ethics and violate the right to health? This paper will try to answer that dilemma.

Different scientific methods were used in the paper in order to cover the topic comprehensively - normative method, comparative method and logical research, research by department, descriptive method, analysis and synthesis of available literature, as well as relevant announcements and analysis of judicial practice.

The right of doctors to strike is recognized by international and national regulations, including the regulations of the Republic of Serbia. However, the key issue in organizing a strike is to ensure a minimum work process, which in essential services should ensure harmony between the right to strike and the right to health, but not to marginalize the impact of the strike and create the appearance of normal work.

We can conclude that the right to strike doctors is their inalienable right that ensures respect for the medical profession, with necessary restrictions that protect the basic ethical values of the profession itself, but also of the entire society.

Keywords: essential services; health care; right to health

САЖЕТАК

Лекари као носиоци здравствене заштите имају право на остваривање и заштиту својих радних права, укључујући и право на штрајк, а грађани пак имају право на здравље. Да ли се остваривањем права на штрајк доводи у питање лекарска етика и нарушава право на здравље? Овај рад покушаће да одговори на ту дилему.

У раду су коришћени различити научни методи како би тема била свеобухватно обрађена – нормативна метода, упоредна метода и логичко истраживање, истраживање за катедром, дескриптивна метода, анализа и синтеза доступне литературе, као релевантних саопштења и анализа судске праксе.

Право на штрајк лекара признато је међународним и националним прописима, укључујући и прописе Републике Србије. Међутим, кључно питање код организације штрајка је обезбеђивање минимума процеса рада, који у есенцијалним услугама треба да обезбеди усклађеност између права на штрајк и права на здравље, али не и да маргинализује утицај штрајка и створи привид нормалног рада.

Можемо закључити да је право на штрајк лекара њихово неотуђиво право које обезбеђује поштовање лекарске професије, уз нужна ограничења којима се штите основне етичке вредности саме професије, али и целокупног друштва.

Кључне рачи: есенцијалне услуге; здравствена заштита; право на здравље

INTRODUCTION

The ambivalence of the right to strike in the medical profession and the conflict between two values equally significant for society is reflected in the very title: the right to strike and the right to health.

Does the exercise of the right to strike place medical ethics into question? Does prioritizing the achievement of personal and trade union rights lead to the neglect of legal and ethical duties toward patients and society? Which right should prevail, or is it possible to reconcile them?

When these two rights are in competition, it is necessary to examine the role of the state in the process of balancing them. State intervention in the relations between social partners in this context carries substantial moral justification [1]. However, strikes also carry potential risks for the uninterrupted functioning of public services and may produce broader societal consequences [2].

The contemporary relevance of physicians' right to strike, and the ongoing restrictions on its exercise, are underscored by Dr. Christiaan Keijzer, President of the Standing Committee of European Doctors (CPME), in a November 2023 response to UK plans to limit the right to strike. He calls on "all national governments to ensure that physicians can exercise their social rights, including the right to strike, as guaranteed under international law" [3].

DISCUSSION

Life and health represent universal human values, and therefore the rights designed to protect them likewise acquire a universal character [4]. The right to health is a personal, inviolable, inalienable, and non-transferable right of every individual. It was initially conceived as a moral principle [5], and subsequently as a social right, after which a dual understanding of the right to health was adopted. The right to health came to be viewed both as a public right – namely, the right of society to public health – and as a private legal relation, that is, a subjective right of each individual.

Contemporary scholarship increasingly advocates the view that the right to health constitutes a collective right. Securing population health is not merely a matter of promoting the health of many individual persons, but represents a collective "public" good that is greater than the sum of its constituent parts [6]. Benjamin Meier and Larisa M. Mori argue that globalization has

reshaped the understanding of the right to health and strengthened the influence of social determinants on individual health, as the focus is no longer solely on the provision of individual medical care, but rather on the societal factors that contribute to the spread of disease. By emphasizing the fundamental social determinants of health, it becomes evident that the human right being protected is, in essence, a collective right [7].

It is difficult to isolate a health condition that results solely from individual factors. Health is a natural extension of the right to life, a prerequisite for the realization of other rights and not only rights, but all human activities, since the health of the human body and mind provides the basis for what we consider a "normal" and "ordinary" human life [8]. A stable and prosperous society is grounded in a healthy population. The concern for the health of the nation reflects not only the level of societal development but also the degree of collective responsibility towards the individual.

International documents proclaiming the right to health, ratified by Serbia and integrated into its legal system, include the Universal Declaration of Human Rights (1948) [5], the International Covenant on Economic, Social and Cultural Rights [9], the Convention on the Elimination of Racial Discrimination [10], and the Convention on the Elimination of Discrimination against Women [11]. These provisions embody democratic values within the modern legal order [12]. The right to health is also affirmed by the European Social Charter (Revised) [13], the Alma-Ata Declaration (1978) [14], and the WHO World Health Declaration (1998) [15].

The right to health is defined in Article 12(1) of the International Covenant on Economic, Social and Cultural Rights, recognizing everyone's right to the highest attainable standard of physical and mental health, with Member States obliged to ensure medical services in case of sickness [9]. In Serbia, Article 68(1) of the Constitution guarantees protection of physical and

mental health [16], while the Health Care Act defines health care as a comprehensive social activity aimed at preserving and improving citizens' health [17]. The state is the guarantor of this right, within which physicians' right to strike must be considered.

The right to strike is one of the fundamental human rights. The right to strike represents an act of freedom, an act of rebellion against injustice and inequality, as well as an act of struggle for the realization of workers' rights. The right to strike is a civic right and one of the key indicators of civil liberties. Only a fully free citizen possesses the right to strike, whereas an employee who does not have this right certainly cannot be regarded as a completely free citizen [18]. However, the right to strike is not absolute and must take into account the interests of the employer and third parties (society, patients). A strike is a measure whose consequences are difficult to predict for the parties to the dispute, society, and the national economy [19]. Accordingly, although the right to strike is recognized as a fundamental human and labor right, it is not absolute and may be subject to restrictions when public safety, health, or essential societal interests are at risk [2].

The right to strike was explicitly recognized for the first time in Article 8 of the International Covenant on Economic, Social and Cultural Rights of 1966, [9] which stipulates that the States Parties undertake to ensure that the right to strike is exercised in accordance with the law, provided that this Article does not prevent the imposition of lawful restrictions on the exercise of this right by members of the armed forces, the police, or the state administration. Despite being widely accepted in practice as one of the most important labor standards, the definition of the right to strike does not exist in any binding instrument of the International Labor Organization (ILO). Throughout the history of the ILO's activities, there has been a broad consensus on the existence of the right to strike, derived from the interpretation of Convention No. 87 on Freedom of Association and Protection of the Right to Organize [20].

The right to strike is mentioned in passing in ILO Convention No. 105 on the Abolition of Forced Labor of 1957 [21] and in Recommendation No. 92 on Voluntary Conciliation and Arbitration of 1951 [22]. According to the position of the ILO Committee on Freedom of Association, the strike is one of the fundamental means for the realization of workers' organizational rights. The Committee affirmed that strike is a right, not just social action. Exceptions apply only to public servants and workers in essential services. Strikes may be prohibited in serious national emergencies if restrictions are proportionate and time-limited. Minimum service levels are allowed when interruption endangers life or health, may cause a national crisis, or concerns fundamental public services. Essential services include health care, and any restrictions must be balanced with compensatory guarantees [23]. For this reason, universal and regional international legal instruments do not treat the right to strike uniformly across all categories of workers [2].

The Constitution of the Republic of Serbia guarantees the right of employees to strike, in accordance with the law and the collective agreement. The right to strike may be limited only by law, depending on the nature or type of work performed [18]. Serbia has ratified the Revised European Social Charter, recognizing workers' and employers' right to collective action, including the right to strike; upon ratification, Serbia excluded strike-related provisions only for Serbian Armed Forces personnel [13].

The right to strike was also regulated by the Law on Strike of the Federal Republic of Yugoslavia from 1996, which defined a strike as an interruption of work organized by employees for the protection of their professional and economic interests arising from employment [24]. Lawful working conditions, as grounds for strike action, particularly concern the limitation of working hours for physicians. Without regulated working hours, all labor rights of the employee decline, especially the right to paid overtime and daily rest [25].

Considering that overtime work among health workers in Serbia is recognized "as a situation that is very common in practice, but one that should be avoided," [26] it causes dissatisfaction among employees and represents a potential strike risk. Achieving balance between family and professional obligations is impossible without establishing a clear distinction between working and non-working time [25].

Mpho Selemogo, in "Criteria for a Just Strike Action by Medical Doctors," [27] outlines six ethical criteria for justified physician strikes: (1) just cause and correct intention – only when inadequate salaries threaten public health; (2) proportionality – avoiding disproportionate harm to patients; (3) reasonable hope of success – preventing futile actions that endanger health; (4) last resort; (5) legitimate authority – unions or associations; and (6) formal declaration with moral justification [27]. Translated into legal terms, these correspond to ILO and national regulations: (1) rationale for strike = protection of labor rights; (2) proportionality = minimum work process; (3) reasonable hope = socio-economic grounding and public support; (4) last resort = exhaustion of peaceful remedies; (5) legitimate authority = legal right to strike by workers/organizations; (6) formal declaration = clear strike demands.

A strike in the Republic of Serbia may be organized at the level of the employer, or within a branch and activity, or as a general strike. The right to make a decision on a strike at the employer level and a warning strike belongs both to employees and to the trade union, while the decision on a strike in a branch, activity, or a general strike is made by the trade union [24]. According to the guidelines of the ILO, the right to strike belongs to employees or their organizations. This is particularly important when trade unions in a country are weak and when their decisions differ from the opinions of the employees. In Serbia, strikes in public interest sectors, including health care, are allowed only with a minimum work process to protect life, health, and property. Strikes must be announced ten days in advance, with unions and

employers cooperating to secure minimum work. The founder sets minimum work in health institutions, considering union input, while the employer regulates procedures through general acts aligned with collective agreements [24]. Health care is included among the activities of public interest, which implies the obligation to determine the minimum work process. The provision of the Law on Strike is in accordance with the ILO guidelines, which classify health care as an "essential service" [28].

The collective agreement does not provide detailed guidelines or require an agreement between unions and employers on the minimum work process. If the director disregards union input, mediation under the Law on Peaceful Settlement of Labor Disputes should follow, in line with ILO guidance that disputes over minimum work duties be resolved by an independent body, and final decisions can be left to judicial authorities [29]. In Serbia, the collective agreement for health care lacks detailed regulation of employer and employee rights during strikes, and the minimum work process defined by law often renders strikes ineffective. The Law on Health Care (2019) explicitly prohibits strikes in emergency services [17], a restriction also presents in Poland and Croatia, though such absolute prohibitions contradict ILO principles, which require only minimum work processes in health care, not total bans. In Serbia, strikes in public interest sectors, including health care, are allowed only if a minimum work process is ensured to protect life, health, and property. In health institutions, the founder sets the minimum process, considering union input, while employers regulate procedures through general acts in line with collective agreements.

It is necessary to establish more precise criteria for determining the number of staff required during a strike, as well as other measures that may be applied in the event of a strike at the employer level [23]. Just as reduced working hours serve to protect employees from excessive exploitation, the acceleration of the decline of their vital energy, the reduction of their work

ability, and ultimately from illness or injury, the minimum work process should also ensure that employees exercising their lawful right to strike are able to do so fully, rather than merely formally. Reducing the right to strike to a merely symbolic right can affect doctors' motivation to work, create a sense of humiliation, and cause them to feel not as full subjects in exercising their rights, but rather as exploited objects [29].

Pursuant to the Polish Trade Union Act of 1982, employees in health care, social institutions, and the pharmaceutical sector are excluded from the right to strike [30]. Furthermore, the Collective Bargaining Act of 23 May 1991 establishes that the right to strike is not absolute, introducing subjective restrictions by excluding categories of employees whose work interruption would endanger human life, health, or national security. In addition, the Act on the Professions of Medical Practitioner and Dentist, while not expressly prohibiting strike action, imposes a statutory duty on medical practitioners to provide assistance whenever delay could result in loss of life, serious injury, or endangerment of health, including other emergency circumstances [31]. This obligation effectively limits the exercise of strike rights in medical practice.

Polish legal doctrine remains divided: A. Zoll considers strikes involving suspension of medical services unlawful, whereas M. Kurzynoga argues that a blanket exclusion of all medical professions would be excessive. The prevailing jurisprudential position is that strike action is impermissible where physician inactivity would cause death, serious injury, or acute impairment of health, as well as in emergencies requiring immediate intervention—even if not directly life-threatening – or where delay in treatment could result in harm to the patient. The danger must be imminent and acute [32]. For professional groups subject to such restrictions, substitute mechanisms for safeguarding their interests, such as arbitration, must be provided [31].

According to the Croatian Health Care Act, a strike by physicians in emergency medical services is not permitted, while in other areas it is allowed, but cannot begin before the completion of the mediation procedure. The minimum work process is determined jointly by the ministry and the trade union, upon the proposal of the ministry, and if they fail to reach an agreement, the matter is decided through arbitration [33]. It should be considered that such a solution be incorporated into Serbian legislation, as it fully corresponds to ILO guidelines.

Article 43 of the Constitution of Romania recognizes the right to strike [34], and the law stipulates the conditions and limits for exercising this right, as well as the guarantees necessary for ensuring essential services for society. Employees in the health sector may strike only under the condition that the organizers ensure "at least 1/3 of normal activity," and that minimum living conditions for the local community are maintained. "Necessary services" are understood to be those services arising from the specific activity of that legal entity. The provision requiring respect for "minimum living conditions of the community" has led to various interpretations, and it is considered that the two conditions must be applied cumulatively [35].

In the Republic of Italy, the prevailing doctrine holds that strike is an individual right exercised collectively [36, 37]. In Italy, the Constitution recognizes the right to strike as an individual right exercised collectively, but only within legal limits. The different legal acts regulate strikes in essential services to balance this right with constitutionally protected interests such as life, health, security, and communication [38–41]. Strikes must be announced in advance, ensure a minimum work process, and follow strict procedures involving employers, authorities, and the Monitoring Commission. Violations can lead to union sanctions. Physician strikes are further regulated by collective agreements, requiring emergency care, advance notice, quotas of working doctors, and restrictions during certain periods. The 2001 National Agreement sets rules for NHS strikes, ensuring continuity of essential services [42].

The minimum work process for general practitioners includes: emergency home visits and integrated home care, home care for terminally ill patients, emergency and advanced rescue interventions outside medical facilities, assistance in major emergencies, assisted transfers by equipped ambulances, and emergency activities in operational centers. Strikes cannot be organized during certain defined periods (e.g., in August; five days before and five days after elections; during Christmas and Easter). To ensure the minimum work process, a quota of physicians assigned to work is determined, and their names are published five days before the strike. A physician assigned to work has the right, within twenty-four hours of receiving notice, to declare that they will join the strike and request substitution, if possible.

The National Agreement of 2001. specifies the modalities of strikes for the National Health Service (NHS), excluding general practitioners, and regulates rules regarding prior notice and time limitations to ensure the continuity of essential services. This agreement implements statutory provisions concerning the minimum essential services during a strike and lists the basic services and criteria for determining the staff contingents necessary to provide them.

The solutions of the Italian Republic and the Republic of Croatia regarding the minimum work process represent examples of good practice, which could serve as a model for addressing this issue in the Republic of Serbia. The content of the constitucional right to work is very complex, and is defined in national legislation arranges in different ways depending on the factors and specificities that characterize them, [43] which also gives rise to the complexity of the right to strike and its relationship to other fundamental rights of citizens.

CONCLUSION

In the competition between two rights – the right to health and the right to strike—priority must be given to the right to health. Life and health are the highest values protected by society and permeate the entire medical ethics framework. Endangering a patient's life and health contradicts the essence of the medical profession and represents a devaluation and undermining of the dignity of both the medical profession and the individual physician. Violating the right to health would mean disregarding medical ethics entirely.

The right of physicians to strike is not absolute, for it safeguards the dignity of both the medical profession and its practitioners. Its complete abolition would erode that dignity and reduce medicine to a mere mechanistic discipline. Accordingly, a societal and legal equilibrium must be established. Neither domestic legislation nor international instruments exclude physicians from exercising the right to strike; rather, they circumscribe it by requiring the preservation of a minimum work process. This ensures the continuous provision of essential medical care and health services in circumstances where assistance is indispensable and cannot be deferred.

These limitations must be clearly defined to avoid any possibility of misinterpretation and to ensure greater participation of employees and trade unions in determining that minimum work process. In Serbia, the decision on the number of employees participating in the minimum work process is made by the director of the healthcare institution, considering the opinions, comments, and proposals of the trade union. In the case of a dispute or non-acceptance of the union's or employees' proposals, a mediation procedure may be initiated within three days from the date the dispute arises [44], and ultimately judicial protection may be sought under the provisions of the Labor Law. Specifically, the provisions allowing participants in concluding a collective agreement to seek protection of rights established by that agreement before the competent court may be applied.

This situation also highlights the shortcomings of the collective agreement for healthcare institutions in the Republic of Serbia, as the trade union failed to negotiate the minimum work process more closely and favorably when concluding the agreement. Signatories of the collective agreement effectively left this matter to the employer and founder of publicly owned healthcare institutions to regulate independently. Under the current regulation of the minimum work process in healthcare during strikes, we unfortunately reach a simulation of full work processes, rendering the strike effectively invisible, and it becomes even more dangerous as any non-participation in that work process may be declared illegal and be a basis for disciplinary proceedings and termination of employment contracts. Medical doctrine requires precise definition of essential healthcare services during strikes and criteria for staffing the minimum work process. Trade unions should play a decisive role in shaping this process, with employee participation at the employer level. The collective agreement must serve as the primary instrument regulating the minimum work process in healthcare.

Obliging physicians to provide emergency medical care, healthcare services to acutely ill individuals, children, pregnant women, and in other cases where medical assistance is essential and cannot be postponed is consistent with the ethical principle *salus aegroti suprema lex esto*.

We can conclude that the right of physicians to strike is their inalienable right, ensuring respect for the medical profession, with necessary limitations protecting the fundamental ethical values of the profession itself, as well as society as a whole, because only a healthy nation is a successful nation.

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