MALPRACTICE CASES IN TURKEY

This article explains the general trend of malpractice cases in Turkey. This study had been review in the light of recent amendments in legislation related to Turkish Law.

In the past, the malpractice cases were not in issue due to lack of private hospitals in the country. The cases were filed against the administration instead of directly filing against the doctor on the ground of state's liability to provide proper health service to its citizens. Previously, almost every doctor was employed by the ministry of health under the law number 657 which governs officials' liabilities. Accordingly, the administration was liable for the compensations due to the malpractice implementations occurred by the doctors. If the state found it necessary, it rarely was seeking recourse against the doctor. For this reason, malpractice insurance was not playing important role for the protection of the doctors stemming from compensations. Particularly after 2002, private hospitals in Turkey had become more apparent with their numbers.

Accordingly, 3 insurance companies presented their insurance policy related to malpractice liability in 2004 for doctors. Until 2006 there was no any related law or clause in legislation of which governs malpractice insurance system and insurance policies were containing liability clause towards third personalities. In 16th March of 2006 general conditions of Professional Liability Regulation is enacted and subsequently in 21st September of 2006, Doctor's Professional Liability Clause is enacted by the related ministry. Subsequent to these laws' entry into force, malpractice insurance policies had been also amended and formed in accordance with said laws. General Conditions of Professional Liability regulation was enacted for all the professions and in this law Turkey's own conditions and some exempt situations are considered by the ministry. However, in doctor's professional liability clause, all insurance companies had formed their own special provisions and they presented their insurance policies freely which was independent from enacted regulation.

In 20.01, 2010 there was revolutionary transformation in malpractice insurance. All doctors who practice their profession under the law numbered 5947 (which is known by the public as full time working law) are subjected to insurance related to Malpractice implementations and compulsory liability insurance.

All doctors including dentists were subjected to obtain compulsory malpractice insurance to be capable to practice their profession in Turkish Republic. In case of this insurance is lacking, administrative fines are regulated against the doctors by the law of 5947. These administrative fines are ten times more than insurance premiums. It is also noteworthy to mention that this compulsory insurance encompasses the doctors who actively practice their profession in any place whether they work in state hospital, private hospital or even individual clinics. In addition, with the said law it has been regulated that premiums shall be totally remitted fully by the doctors themselves and half of the premium shall be refunded to them by employing hospital. However self-employed doctors must pay their premium completely by themselves.

Refund of the premiums are regulated by the declaration of Compulsory Finance Liability related to Malpractice Implementations numbered 2010/1.

In consideration of the report of Health education and Health Manpower situation of Turkey, currently 111.211 doctors are providing health services. 31.978 of them are general practitioner, 58.258 of them are specialist and 20.975 are under specialist education. In addition to this, considering the number of 19.264 dentists and the graduates from 74 different medical faculties, malpractice insurance has become very important particularly subsequent to entry into force of the law number 5947.

The doctors are permitted to choose their insurance company freely by the law. However, in practice head doctors of the hospitals are directing their employee doctors to a certain insurance company. This situation is also contrary to law and free selection principle. Generally personals of the hospitals follow the indication of the head doctors and if the doctors raise objection, administration of hospitals allows them to select their insurance company. According to our opinion, in future there will be ongoing cases at the courts on the ground that employer is not permitted to restrict free choice of doctors. There is a similar high court decision where misleading of employer on employee's salary is found contrary to the

law by the high court.

In the Turkey, there are few researches regarding malpractices and ratio of medical errors occurred by the doctors. However, said researches had been done by analogy based on news and media publications. In Turkey unlike many European countries, there are no records or statistical studies regarding malpractice implementations at the hospitals. Therefore, it requires time consuming study in order to reach statistical and scientific results regarding malpractice implementations. However, generally in malpractice cases, we see that filed cases have generally similar characteristic. These cases are examined below.

Until date of 01.10.2011 (very recent amendment), cases stemming from malpractices implemented by the doctors must have been examined and decided by administration courts based on the law of Administrative Trial Procedure. Therefore, it was not possible to file a case directly against the doctors if the doctor has not severe or personal mistake. There used to be other mechanism called as civil procedure rather than administrative procedure. Civil procedure was to file a case directly towards doctors for compensation liability due to severe or personal mistakes. Accordingly, in practice lawyers were filing two cases simultaneously at the administrative court and also at the civil court. In Turkey, administrative courts don't have hearings unless the court finds hearings are necessary. Unlikely, civil jurisdiction procedure requires hearings. Because of this reason, prior to the legislation is amended, the main trend was to file a single case against the state in administrative courts because it used to take less time as compared to civil jurisdiction. In addition, the collection of compensation is always more easy from the hospital rather than the doctor himself. Once administration court decided compensation against the hospital, hospital administration was not inclined to recourse the compensation to the doctor. Or sometimes a hospital had recourse towards doctor with very low ratios. And we believe that the last amendment in legislation is enacted to ease to recourse compensations to doctors. It's also noteworthy to mention that, the law numbered 6100 has recently enabled lawyers to file malpractice cases in civil courts by the entry force. Accordingly, we believe that patients will sue the doctors more than the past.

Even the statistical data are lacking related to the doctor's errors, it's well known fact that the damage to patients occurred by the Turkish doctors are more than other developed countries. The number of the doctors demographically is less than developed countries in Turkey, and this fact leads doctors to make more mistakes due to the fact that Turkish doctors must look after high amount number of patients. Turkish doctors are opened to make more mistakes under this intensive work conditions. On the other hand, lack of awareness in patients and protection of the bureaucracy on doctors eliminates doctors being prosecuted. For this reason, as compared to other developed countries, in Turkey amount of malpractice cases which are filed against doctors are not same as developed countries. On the other hand, there is notable increase in malpractice cases because of the publications and media's broadcasting publicly.

The other important issue requires be touched on is the amount of compensations stemming from malpractice implementations. Individual's enrichment by the compensation can't be accepted by Turkish Law. This principle restricts amount of the compensation in Turkey. In general practice, the court takes into account of individual's salaries when it determines the amount of compensation. If a patient is died because of malpractice, the court determines the material compensation by calculating the loss of salaries until his/her retirement. Considering the fact that notable group of Turkish citizens earns their monthly salary from official minimum wage limit, the compensation does not amount to high degrees. For instance, the court decided only 10.000 Turkish Lira as a compensation for a patient who lost her ovarian due to the malpractice implementation on the ground that the patient had already had 2 children. A person who lost his mother due to malpractice implementation filed a case and the court decided only 4.000 Turkish lira on the ground that the mother was 73 years old. In general, even a patient lost his/her life with 100% doctor's mistake of malpractice, the compensation amounts approximately 100.000 lira. Only few examples show us that this amount can be sometimes 100.000 lira or 150.000 lira.

Lastly, in general, perception of public is not satisfactory for the malpractice cases. Generally people thinks that these cases take so much time and the compensations are not satisfactory. Accordingly, in public view, the justice on these cases is not properly established. For this reason, there are some new initiatives by some MPs but there is no still any proposal submitted to the parliament or no ongoing discussions at commission of the parliament. Therefore, we believe new regulations must not be

expected in near future.

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