N A T I O N A L B I O E T H I C S C O M M I S S I O N

# O P I N I O N

## ON TRANSMISSIBLE INFECTIOUS DISEASES: PUBLIC INTEREST AND AUTONOMY

The National Bioethics Commission considered, in repeated sessions, the issue of acceptable restrictions on personal autonomy to protect public health in the case of transmissible infectious diseases. This debate is a major concern of contemporary bioethics, which influences crucial decision-making when there is an outburst of an epidemic or an endemic. There are frequent examples in the news, such as the avian influenza (bird flu), the SARS and most recently the H1N1 virus; furthermore the spread of HIV/AIDS and the recurrence of tuberculosis are also arising matters.

At the core of the problem lies the fact that free decisions about personal health may affect the health or endanger the lives of others in the immediate or wider vicinity. This perceived conflict between the principle of autonomy and public interest invites a consideration of ethically and legally acceptable choices.

Based on the views and assumptions of its previous Opinion on the "consent in the relationship patient-physician", the Commission felt that the question is so important as to be considered in a separate Opinion. The Commission issued its opinion after consulting specialized scientists, Professors G. Saroglou, D. Trichopoulos and A. Hatzaki.

## *I. General Overview*

### *1. Transmissible infectious diseases*

The main characteristic of transmissible infectious diseases is that the infected person is carrier for the transmission of the disease to others. Therefore, unlike with other diseases, decisions by patients have implications not only for the patients themselves but also for the health of others or of the whole community in general.

This already complicates the issue of patient autonomy. The risk for the health of others justifies certain limits to autonomy. These limits are of two kinds; either to the"stricto sensu" autonomy in the strict sense regarding personal health (i.e. the right of everyone to decide on matters of their own health) or to the general autonomy (especially the enjoyment of the freedom of movement and establishment). The possibility of the latter is stipulated in the international law and modern national legal systems, including Greece.

As the path of transmission and the severity of infectious diseases vary significantly, the nature and extent of such limits require special attention.

### *2. The priority of the principle of autonomy*

In this context, the Commission confirms its Opinion on the supremacy of personal autonomy, meaning the freedom of the individual to decide on matters relating to the personal health and the way of living, providing that the lives of other people are not significantly affected.

What this assumption primarily means is that when the medical community is called to provide advice on measures required to protect public health or when public authorities are called to adopt such measures, autonomy should not be limited without adequate documented justification.

In particular, the Commission believes that the general rules on the exercise of autonomy in patient-physician relationship allow an effective management of transmissible infectious diseases. For example: the appropriate information to patients – including, among other things, advice on self-limitation – or, exceptionally, the supremacy of medics to act on their own initiative in case of emergency. At any rate, the discretion to impose restrictions is limited when dealing with difficultly transmitted viruses or mild infections.

## *II. Special issues*

When public health is at risk due to the spreading of infectious disease the Commission considers the following:

### *1. Restrictions to autonomy relating to personal health*

#### *a) Basic principles*

Preventive measures adopted by public authorities to address threats against the health of others may include restrictions on personal autonomy in matters of health but only in exceptional circumstances. "Exceptional" are the circumstances of spreading epidemics or pandemics, according to the internationally accepted definitions of these terms. National authorities may not arbitrarily dilate these definitions.

In such circumstances, medics and designated health authorities do not have the obligation to ask for patient consent and they could act on their own initiative (self-action). The legal basis for such restrictions consists mainly in art. 8 of the Convention on Human Rights and Biomedicine (Oviedo Convention), which justifies medical self-action in "emergency situations".

In this context, restrictions must comply with the principle of proportionality, i.e. they must be appropriate and necessary in order to protect public health without exceeding the purpose for which they are adopted.

*b) Vaccination*

In principle, the vaccination of the population as a measure of prevention, particularly the vaccination of vulnerable groups, requires informed consent. In this context, relevant information may be also provided to the general public through the media. The duty of public authorities is to ensure the validity of this information by allocating the task exclusively to a responsible entity and by taking steps to avoid inaccuracies which may inspire distrust or fear. It is worth noting that 99% of children in the US are vaccinated with a minimum rate of complications, which proves that benefits far exceed any drawbacks; therefore, it is not justified to spread doubts. In "emergency situations" in the above sense, the Commission feels that even mandatory vaccination is not to be excluded, especially for those who are highly probable to become carriers and transmit the infection due to the nature of their occupation. They should be offered, however, the option of changing duties. The established scientific requirements for clinical trials of new treatments (vaccines or medicines) may not be bypassed in order to accelerate the availability of such treatments to the public. Otherwise their efficacy will remain uncertain and citizens will be misinformed as a result.

In addition, the Commission thinks that in the exceptional circumstances of epidemics or pandemics, limits to patents on new treatments could be justified to the extent possible. Such limits could be argued as a legal/policy choice in competent international and supra-national fora.

*c) Treatment*

The treatment of those infected should also be based on informed consent. Forced treatment is not justified in principle, except in “emergency situations”.

When the number of medical and nursing staff or the available treatments do not suffice to ensure care to all those infected (especially in case an infection spreads rapidly) the Commission stresses that the government must establish in advance general priority rules for access to treatment. The basic priority criteria should preferably be prescribed by law. By way of indication, such priority criteria may include the severity of symptoms, the age of the patient and the definition of relevant vulnerable groups.

## 2. *Limits to autonomy on public health grounds*

### *a) General rule*

Limits to the general autonomy of patients – especially the freedom of movement and establishment – are justified only if they are absolutely indispensable to protect public health pursuant to the Constitution (arts. 5 (4), 25 (1)). The principle of proportionality as discussed above applies in all circumstances. For example, hospitalized patients should be restricted in specially contained facilities.

### *b) The risk of social stigma*

The Commission stresses the risk of social stigma that may arise from the isolation (“ghetto-ing”) of specific sub-populations with distinctive cultural characteristics or ways of living when an infectious disease erupts within such groups.

Such cases must be dealt with by personalized medical care and social welfare measures especially as regards the improvement of hygiene in their living conditions.

*c) Illegal immigrants*

In case of manifestation of infectious disease or in cases when preventive measures (e.g. vaccination) need to be applied on illegal immigrants, the government must ensure that immigrants would be addressed to the health services. The access of immigrants to health services should be unhindered and independent on their immigration status; otherwise the risks for public health in general will be multiplied.

*d) HIV/AIDS*

This particular disease presents a set of peculiar problems. Even though the spread of the virus is in general relatively difficult, the disease is very severe despite progress in treatment in the recent years. Moreover, social perceptions – especially regarding high risk vulnerable groups – remain extremely negative in our country. The following call for attention:

The autonomy of HIV seropositives or HIV patients can be restricted in view of public health protection only if the particular setting of social contact is prone to the transmission of the disease. Thus, although mandatory testing for seropositivity is not justified in the absence of qualifying circumstances, it can be legitimate for certain occupations like physicians or nurses or for participation in certain social activities such as sports. In these cases, a positive test result justifies the removal of the seropositive, but just from this particular social context. By contrast, social environments, which are not prone to the transmission of the

virus, do not justify deviations from the respect of autonomy which is generally applicable.

Finally, special attention is required when the virus occurs in enclosed areas of mandatory containment, like schools, hospitals, military barracks or prisons. Any limits to autonomy which are considered indispensable must be combined with additional measures of supervision in order not to betray the purpose of the presence of the HIV seropositive in these areas (e.g. participation in common school activities, military exercises, etc.).