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Mental Health – Personal Right, Protection of Integrity of an Individual. On the Axiology of Human Rights

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Abstract: *Mental health is one of the highest priority values for both the individual and the system of protection of the human rights. Every person, regardless of the age and social status, desires good health. We are currently witnessing an increase in the number of cases of disorders of neurological origin. Depression and stress are taking an ever greater toll on the society. This paper presents the axiology of protection of the human rights with regards to mental health. Legislation and application of the law, in order to remain rooted in the essence of the human rights, ought to be practised in accordance with universal, timeless values that constitute the human existence and identity.*

Key Words: *Human Rights; Personal Rights; Mental Health; Anti-discrimination Clauses; Prevention and Protection of Mental Health; European Convention on Human Rights; European Court of Human Rights; Poland.*

Introduction

Every expression of activity and creativity has its beginning in thought, conception which is formed in the midst of a given social, cultural and philosophical context. All throughout the ages, people have desired to delve into the deepest recesses of the human mind. Krikor Dikranian from the Department of Anatomy and Neurobiology of the Washington University School of Medicine wrote: "It is in the human nature to be curious about how we feel pain, see the world, hear bird's songs, remember, forget, reason. We want to understand the nature of love, anger, satisfaction, desire and madness".[1]

Legal regulations started to emerge for the purpose of moderating social relations, reconciling the interests of various groups and individuals and counteracting arbitrariness. The primary goal of the law is the

[1] See DIKRANIAN, K. The Amazing Brain. *Biomedical Reviews*. 2015, vol. 26, p. 1. ISSN 1310-392X.

protection of the human dignity[2] which is considered the 'arch-source' of all rights and liberties.[3] Article 30 of the Constitution of the Republic of Poland of 2nd April 1997[4] states that respect and protection of the human dignity is the obligation of the public authorities. Implementation of the human rights is a prerequisite for the actualisation of justice.[5] Dignity is the core founding value not only for the domestic law, but also for the international human rights law. The ideal of conduct stemming from dignity should be realised on both the vertical sphere and the horizontal sphere. The dignity tied to the inner value of a human[6] takes the discussion beyond the realm of the physicality. The scope of the right to live encompasses the human beings in their physical existence, intellect and mind. In the law-making process and application of the law, the appeal to timeless and universal values aids in prevention of actions which might lead to the questioning of the axiology of life.

Protection of mental health through the lens of the human rights

The axiology of the right to live helps to identify, to interpret and to reconstruct the values that inform substantive legal regulations, with the intention of achieving more effective and more efficient protection. Recognition and observance of the right to live is an essential condition for the realisation of other rights. Article 6 paragraph 1 of the International Covenant on Civil and Political Rights[7] states that "Every human being has the inherent right to life", which implies that sickness, disabil-

[2] See LAUREN, P. G. The Foundation of Justice and Human Rights in Early Legal Texts and Thought. In: D. SHELTON, ed. *The Oxford Handbook of International Human Rights Law*. 1st ed. Oxford: Oxford University Press, 2013, p. 163. ISBN 978-0-19-964013-3.

[3] Magdalena Butrymowicz used the term "The dignity of the human being is the cornerstone of all laws" in BUTRYMOWICZ, M. Human Dignity in Law – A Case Study of the Polish Legal System. *The Person and the Challenges*. 2016, vol. 6, no. 2, p. 87. ISSN 2083-8018.

[4] See *Constitution of the Republic of Poland of 2nd April 1997* [1997-04-02]. Journal of Laws, 1997, no. 78, item 483, as amended.

[5] See MEIER, B. M., D. P. EVANS, M. M. KAVANAGH, J. M. KERALIS and G. ARMAS-CARDONA. Human Rights in Public Health: Deepening Engagement at a Critical Time. *Health and Human Rights*. 2018, vol. 20, no. 2, p. 86. ISSN 2150-4113.

[6] See McCRUDDEN, Ch. *Human Dignity and Judicial Interpretation of Human Rights*. 1st ed. New York: New York University School of Law, Institute for International Law and Justice, 2008, p. 66. International Law and Justice Working Papers, no. 2008/8. ISSN 1552-6275.

[7] See *International Covenant on Civil and Political Rights* (ICCPR) adopted and opened for signature, ratification and accession by the General Assembly Resolution 2200A (XXI) of 16th December 1966; entered into force on 23rd March 1976, in accordance with the Article 49.

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ity or infirmity does not disqualify from the subjective scope of the right to live. It is worth noting that among the most prominent works of art, there are ones that were created by persons afflicted with various ailments, e.g. Vincent van Gogh, who suffered from anxiety and mental disorders, unrecognised during his lifetime, currently esteemed as one of the most distinguished painters of all time, or Nikifor Krynicki (born as Epifaniusz Drowniak), who had an intellectual disability, in the final years of his life counted among the lead representatives of the so-called 'naïve art'. The perception of conditions with a neurological cause is currently changing. The epidemiology of mental disorders and illnesses is evolving. Unfortunate life events, accidents, chronic stress can all diametrically alter the lives of people at all stages of life.

According to the data, over 450 million people worldwide are suffering from mental disorders.[8] In Poland, at the time of compilation of the current National Programme for Mental Health Protection, one of the most frequently diagnosed mental disorders was depression. Other conditions of psychological nature that were widely diagnosed in the Polish citizens aged 18 – 64 at the time of the National Programme for Mental Health Protection included neurotic disorders (e.g. agoraphobia, specific and social phobias, post-traumatic stress disorder, neurasthenia), mood affective disorders (e.g. dysthymia, mania), impulse-control disorders (e.g. attention-deficit hyperactivity disorder, oppositional defiant disorder, explosive disorder), substance use disorders (e.g. drug addiction, alcoholism).[9]

At present, there has been an increased focus on the role of "global health" – an interdisciplinary field which stresses the necessity of not only specialised knowledge and practical skills, but also the "implementation of the human right to health".[10] Technological progress results in new terms and new methods of treatment, but also transformations in the formerly accepted medical standards. One could point to e.g. remote diagnostics or telesurgery. In the light of the above-mentioned, it may be

[8] See *Decree of the Council of Ministers on Regarding the National Programme for Mental Health Protection for the Years 2017 – 2022* [2017-02-08]. Journal of Laws, 2017, item 458, p. 5.

[9] See *Decree of the Council of Ministers on Regarding the National Programme for Mental Health Protection for the Years 2017 – 2022* [2017-02-08]. Journal of Laws, 2017, item 458, p. 6.

[10] See HALL-CLIFFORD, R. and R. COOK-DEEGAN. Ethically Managing Risks in Global Health Fieldwork: Human Rights Ideals Confront Real World Challenges. *Health and Human Rights*. 2019, vol. 21, no. 1, p. 7. ISSN 2150-4113.

justified to contend for the implementation of systemic solutions influenced by the nature of the human rights, so as to counteract the decline in the holistic significance of medicine and medical ethics. Observance of the human rights constitutes a form of protection against arbitrary actions and/or negligence on the part of public authorities and other subjects, e.g. the right to health assessment and diagnostics, the right to petition, the right to an effective remedy, assurance of adequate quality and standards of medical service in public and private medical facilities, equalizing access to health services.

This issue takes on special importance in the context of development of global, national and local strategies/programmes for the protection of health. There is an observable asymmetry of the subjects involved in the decision-making.[11] Human solidarity, humanitarianism and goodwill should serve as remedies to the differences stemming from varying approaches to the health protection programmes, counteracting indifference and passivity in the face of the human suffering. Being led by the essence of the human rights is conducive to social activation and it also stimulates the factors of active engagement in the protection of health based on objective criteria.

A violation of the human rights standards was confirmed by the European Court of Human Rights regarding the application of Genadijs Mihailovs against Latvia, 2013, no. 35939/10. Placement of a man with a disability and suffering from epilepsy in a social care institution without his consent was a breach of conventional standards. His wife had him legally incapacitated and confined to a social welfare facility for the period of ten years.[12] In actuality, it was an arbitrary deprivation of liberty. According to the Latvian law of the day, an incapacitated person did not have the right to judicial oversight or the ability to appeal against the decision.[13]

According to the World Health Organization, even though 75 percent of countries worldwide do have laws regulating the issues of mental

[11] See HALL-CLIFFORD, R. and R. COOK-DEEGAN. Ethically Managing Risks in Global Health Fieldwork: Human Rights Ideals Confront Real World Challenges. *Health and Human Rights*. 2019, vol. 21, no. 1, p. 10. ISSN 2150-4113.

[12] See *Case of Mihailovs v. Latvia* [2013-01-22]. Judgement of the European Court of Human Rights, 2013, Application No. 35939/10, §§ 8 and 12 – 16.

[13] In the Polish law, the institute of legal incapacitation is regulated by the Articles 13 – 22 of the *Civil Code of 23rd April 1964* [1964-04-23]. Journal of Laws, 1964, no. 16, item 93, as amended.

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health, in only 51 percent of countries were these regulations devised after the year 1990.[14] Regulations ought to be free from legal gaps and indeterminate phrases, given the delicate nature of the problem of protection of mental health. These laws should be characterised by foresight and should be well suited to the challenges of the modern world. People suffering from mental disorders must be protected rather than belittled or stripped of their rights. The axiology of the right to live plays an important role in the unification of norms from different fields of law dealing with the subject of mental health protection.

The following question concerns a person's right to liberty and personal security. The European Convention on Human Rights[15] addresses this issue in the Article 5 which "contemplates the physical liberty of the person […]. The key purpose of the Article 5 is to prevent arbitrary or unjustified deprivations of liberty".[16] It should be noted that detention may be carried out in accordance with the domestic law, but deemed arbitrary in the light of the norms of the European Convention on Human Rights. A situation in which an individual holds a divergent opinion or lifestyle, but does not pose a threat to self or others is not a valid reason for detention.[17] In accordance with the Article 5 paragraph 1(e), a mentally ill person may be detained for the purpose of receiving therapy and treatment. In order to prevent arbitrary detention, the functionaries and the medical staff of the social welfare facilities ought to evaluate the current state of the patient rather than act solely on the basis of an earlier diagnosis.[18] On the grounds of international standards of the human rights protection,

[14] See *WHO Resource Book on Mental Health, Human Rights and Legislation: Stop Exclusion, Dare to Care*. 1st ed. Geneva: World Health Organization, 2005, p. 1. ISBN 92-4-156282-X. See also *Mental Health Legislation & Human Rights*. 1st ed. Geneva: World Health Organization, 2003. 50 p. Mental Health Policy and Service Guidance Package. ISBN 92-4-154595-X.

[15] See *Convention for the Protection of Human Rights and Fundamental Freedoms* [European Convention on Human Rights], opened for signature in Rome on 4th November 1950 and entered into force on 8th September 1953. The Polish Government ratified it on 19th January 1993.

[16] See *Guide on Article 5 of the European Convention on Human Rights: Right to Liberty and Security* [online]. Strasbourg: European Court of Human Rights, 2019, pp. 8-10 [cit. 2019-10-22]. Available at: https://www.echr.coe.int/Documents/Guide_Art_5_ENG.pdf.

[17] See *Case of Riera Blume and Others v. Spain* [1999-10-14]. Judgement of the European Court of Human Rights, 1999, Application No. 37680/97.

[18] See e.g. *Case of Varbanov v. Bulgaria* [2000-10-05]. Judgement of the European Court of Human Rights, 2000, Application No. 31365/96, § 47 or *Case of Petukhova v. Russia* [2013-05-02]. Judgement of the European Court of Human Rights, 2013, Application No. 28796/07, § 57.

detention proceeding from mental illness or mental disorder must remain under judicial oversight and the state of health must be continually monitored.

Nowadays, many people suffer for reasons unrelated to poor state of health. Other such factors include stress, loneliness or unforeseen life events that result in trauma. Individuals afflicted by negative emotional states may end up in detention, whether by chance or deliberate action. However, it should be noted that there also exist people who by their own volition burden themselves with e.g. addictions or dangerous ideologies.

A threat to health and life that is emerging in more and more countries is that of designer drugs. The scale of the problem is growing at an alarming rate. Designer drugs are made of combinations of various psychoactive substances[19] that are destructive to the central nervous system and can cause multiple organ failures. Designer drugs are sold undercover of being collectibles, spices, bath salts, incenses, etc.[20] The 'snares' of designer drugs entrap teenagers and adults alike. Since the "drug landscape" is quickly evolving and dealers and manufacturers continue to alter the composition of the drugs so as to circumvent the law, the conclusion is, therefore, that it is crucial to introduce strong preventive measures, educational programmes and legal and procedural solutions.

According to the Polish law, mental health is a fundamental personal right.[21] A conventional obligation to protect mental health was placed on government administration bodies and local government units. These actions may also be supported by associations, foundations, social non-profit organizations, churches and religious associations.[22] Pursuant to the

[19] See ALMAGHRABI, M., M. MAJRASHI, D. DESAI, A. FUJIHASHI, J. DERUITER, C. R. CLARK and M. DHANASEKARAN. Global Health Impact of Major Classes of "Designer Drugs": Structural, Pharmacological and Toxicological Overview. In: *Alzheimer's Disease & Treatment* [online]. Reno: MedDocs Publishers, 2018, p. 1 [cit. 2019-10-22]. Available at: https://meddocsonline.org/ebooks/alzheimers-disease-and-treatmen/global-health-impact-of-major-classes-of-designer-drugs-structural-pharmacological-and-toxicological-overview.pdf.

[20] See BAUMANN, M. H., E. SOLIS, L. R. WATTERSON, J. A. MARUSICH, W. E. FANTEGROSSI and J. L. WILEY. Bath Salts, Spice, and Related Designer Drugs: The Science behind the Headlines. *The Journal of Neuroscience*. 2014, vol. 34, no. 46, p. 15150. ISSN 0270-6474.

[21] See Preamble of the *Mental Health Protection Act* [1994-08-19]. Journal of Laws, 1994, no. 111, item 535, as amended.

[22] For more, see Article 1 paragraph 2 of the *Mental Health Protection Act* [1994-08-19]. Journal of Laws, 1994, no. 111, item 535, as amended.

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Article 10(b) paragraph 1 of the Mental Health Protection Act of 19th August 1994, an Ombudsman for the Rights of Patients of Psychiatric Hospitals was instated. The statutory duties of the Ombudsman include, first and foremost, helping the patients in enforcing their rights associated with admission, treatment, stay and discharge from a psychiatric hospital, in making complaints to head of a psychiatric hospital and other such institutions, in cooperating with the family, statutory representative, legal or actual guardian, devising and conducting educational and informative initiatives connected with the issues of mental health protection.[23] Realisation of these tasks requires cooperation, involving not only the hospital management, staff and psychiatric consultants, but also the Ombudsman for Children and the Ombudsman. Furthermore, the advisory entity of the Minister of Health is the Council for Mental Health. The competences of the Council for Mental Health encompass actions such as monitoring of the implementation of tasks in accordance with the National Programme for Mental Health Protection and directing the research and implementation activities.

Based on the Article 12 of the Mental Health Protection Act of 19th August 1994, prescription of a course of treatment ought to be aimed at improving the state of health in the least burdensome way possible. During the stay at a psychiatric hospital or a social welfare home, a person with a psychiatric disorder has the right to remain in an unrestricted contact with family and others; it is unlawful to control correspondence in any way (Article 13 of the above-stated Act). If there is no threat to the life of the individual or to the life or health of others, the patient may be allowed by the head of the hospital department to temporarily stay outside the bounds of the facility without being discharged from the hospital (Article 14 of the above-stated Act). However, it is crucial to exercise discernment in the analysis of the circumstances, the course and the context surrounding each case.

In the complaint of H. M. against Switzerland, 2002, no. 39187/98, the applicant was not ensuring proper living and housing conditions, care and treatment for his mother. The Governor of the Aarberg district filed a motion to have the woman placed in a specialised institution to which

[23] See legal basis: Article 10(b) paragraph 2 of the *Mental Health Protection Act* [1994-08-19]. Journal of Laws, 1994, no. 111, item 535, as amended; and Article 1 paragraph 1 of the *Decree of the Minister of Health on Regarding the Detailed Procedures and the Manner of Operation of the Ombudsman for the Rights of Patients of Psychiatric Hospitals* [2006-01-13]. Journal of Laws, 2006, no. 16, item 126, as amended.

she freely and consciously consented.[24] While admitted, she had an unrestricted contact with the outside world. If a given person consciously and willingly consents to being admitted into a facility of this sort, the situation does not constitute a violation of the Article 5 of the European Convention on Human Rights. This leads to the conclusion that the principle of dignity plays a significant role also as an "interpretive tool to fill the gaps and to resolve conflicts between conflicting fundamental rights and to find moral justifications in hard cases".[25] Protection of health must be guided by the welfare of the individual.

In the International Covenant on Economic, Social and Cultural Rights,[26] the right to healthcare is operated as a universal human right. The states parties have been placed under the obligation to ensure the highest achievable standard of protection of physical and mental health (Article 12 paragraph 1). The right to health is an inherent and inseparable element of the human rights and liberties. Realisation of this right enables a better "understanding of a life in dignity".[27]

The law-making and application of the law must be carried out with respect to personal rights and privacy. This can be illustrated by the application of Neringa Mockutė against Lithuania, 2018, no. 66490/09. The applicant had been diagnosed with acute paranoid psychosis (*ūmi paranoidinė psichozė*) which developed into other mental conditions. In year 2003, she had contacted Ojas Meditation Centre, a branch of the Osho religious movement. The applicant was made to continue the therapy in the Republican Vilnius Psychiatric Hospital (*Respublikinė Vilniaus psichiatrijos ligoninė*). The European Court of Human Rights ruled this case as a violation of the standards of the human rights due to exertion of pressure on the patient, interfering and obstruction of religious practice on

[24] See *Case of H. M. v. Switzerland* [2002-02-26]. Judgement of the European Court of Human Rights, 2002, Application No. 39187/98, §§ 18 and 35.

[25] See STAFFEN, M. R. and M. ARSHAKYAN. About the Principle of Dignity: Philosophical Foundations and Legal Aspects. *Seqüência (Florianópolis)*. 2017, vol. 38, no. 75, p. 58. ISSN 0101-9562.

[26] See *International Covenant on Economic, Social and Cultural Rights* (ICESCR) adopted and opened for signature, ratification and accession by the General Assembly Resolution 2200A (XXI) of 16th December 1966; entered into force on 3rd January 1976, in accordance with the Article 27.

[27] See *The Right to Health* [online]. 1st ed. Geneva: United Nations, Office of the United Nations High Commissioner for Human Rights, 2008, pp. 1-6 [cit. 2019-10-22]. Fact Sheet, no. 31. ISSN 1014-5567. Available at: https://www.ohchr.org/Documents/Publications/Factsheet31.pdf.

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the part of the medical staff and unauthorised sharing of the patient's personal beliefs to third parties. This subject was discussed in the programme entitled "Srovės" on LNK, a nation-wide television channel.[28] The judgement of the European Court of Human Rights of 27th February 2018 confirmed a violation of the Article 8 (right to respect for private and family life) and the Article 9 (freedom of thought, conscience and religion) of the European Convention on Human Rights.

In the light of the above-stated, it is important to ensure proper standards of care and treatment provided by qualified medical professionals who will also adhere to high moral and ethical norms. Paulius Čelkis and Eglė Venckienė pointed out that "the members must ensure availability of services of healthcare of sufficient quality to all citizens according to the needs and the status of the most vulnerable groups".[29] Health is a personal right and an asset that is sought after by all people, regardless of age and social status. It is beyond a doubt that special care should be extended to people who, by virtue of old age, poor health or injury due to an accident, are no longer able to take adequate care of themselves or to take responsibility for their own actions. Other groups that are at a higher risk of exclusion are members of ethnic and national minorities, people living in poverty, fleeing from natural disasters, wars and conflicts.

Inter-generational relations are another area that calls for application of regulations based on axiological universals. Ageism is a threat to the subjectivity of the elderly. Societal ageing is becoming a problem of sociology, demographics and medicine, but also of ethics and law. However, infirmity or disability is not always tied to old age. According to the European Disability Strategy, one in six people in the European Union has a mild to severe level of disability, which means that around eighty million people in the European Union are unable to fully participate in the socio-economic life.[30] Disability can affect people of all ages. People

[28] See *Case of Mockutė v. Lithuania* [2018-02-27]. Judgement of the European Court of Human Rights, 2018, Application No. 66490/09, §§ 6, 10, 15, 17 – 20.

[29] See ČELKIS, P. and E. VENCKIENĖ. Concept of the Right to Health Care. *Jurisprudencija*. 2011, vol. 18, no. 1, p. 277. ISSN 1392-6195.

[30] See *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: European Disability Strategy 2010 – 2020: A Renewed Commitment to a Barrier-free Europe* [2010-11-15]. COM (2010) 636 final, p. 3. See also *Living Conditions in Europe: 2018 Edition*. 1st ed. Luxembourg: Publications Office of the European Union, 2018. 143 p. ISBN 978-92-79-86497-1.

with disabilities are seventy percent more likely to experience poverty.[31] In the current approaches to the social security, the emphasis is being placed on the shift from institutionalised systems to environmental ones. According to more than a half of all Europeans, discrimination on the basis of age or disability is a widespread phenomenon in the European Union Member States.[32] Projects aimed at addressing this issue require intensive and well-coordinated action.

The phenomenon of discrimination is one of the most compulsive threats to the dignity, rights and liberties of an individual. Anti-discrimination clauses were introduced in the Article 32 paragraph 2 of the Constitution of the Republic of Poland of 2nd April 1997, in the Article 2 paragraph 1 of the International Covenant on Civil and Political Rights[33] and in the Article 14 of the European Convention on Human Rights. The paradigm of discrimination consists in deliberate actions that stigmatise an individual through verbal and non-verbal means. One may become the victim of discrimination based on his/her actions, opinions and factors beyond his/her control, e.g. social background, ethnicity, gender. Discrimination can permeate various spheres of the state activity, the process of legislation and interpretation of legal acts.

An analysis of the Article 14 of the European Convention on Human Rights reveals that the inventory of circumstances that may give rise to the discrimination is non-enumerative. In the European Convention on Human Rights, protected personal characteristics are interpreted in a broad manner which makes it possible to take action on behalf of a person who became a target of a violation even if he/she does not possess a characteristic named in the Article 14 of the European Convention on Human Rights. This solution leaves room for action against new and

[31] See *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: European Disability Strategy 2010 – 2020: A Renewed Commitment to a Barrier-free Europe* [2010-11-15]. COM (2010) 636 final, p. 3.

[32] See *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: European Disability Strategy 2010 – 2020: A Renewed Commitment to a Barrier-free Europe* [2010-11-15]. COM (2010) 636 final, p. 6.

[33] See Article 2 paragraph 1 of the *International Covenant on Civil and Political Rights* – it is of an accessory character, which means that when submitting an application to the United Nations Human Rights Committee, one should prove a violation of the above-mentioned Article in addition to a violation of a different law contained in the Covenant. A similar structure has been adopted in the Article 14 of the *European Convention on Human Rights*.

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emerging forms of discrimination, e.g. caused by illnesses formerly undiagnosed by medicine. Discrimination on the basis of health conditions negatively impacts personal life and depreciates other rights and liberties. On the 4th of November 2000, Protocol No. 12 to the European Convention on Human Rights[34] was signed, containing a general prohibition of discrimination. There is a need for action supporting genuine and effective equality. Non-discrimination is a fundamental value tied to the human being as well as an aim that requires coordinated and individualised action.

The above-mentioned issue can be discussed in more detail using the example of an application examined by the European Court of Human Rights in Strasbourg in the case of A.-M. V. against Finland, 2017, no. 53251/13. The applicant, a person with disability, requested to remain in the care of a foster family. In accordance with the decision of a state authority, he was instead returned to his home town. He claimed that this decision constituted a violation of respect of his private and family life as well as a restriction of his freedom of movement. The European Court of Human Rights in its judgement of 23rd of March 2017 ruled that the interference with the fundamental rights was appropriate and in line with the applicant's best interest, since upon being placed in his home town, he would be provided with adequate living conditions, treatment, rehabilitation and education. The legal proceedings in the home country were handled in accordance with the substantive and procedural guarantees. The applicant had been allowed the ability to express his position at any stage of the proceedings.[35] The situation of the applicant was analysed in great detail and the decision was suited to his state of health, needs and his form of disability.

The signatory states of the European Convention on Human Rights are obligated to protect people with disabilities and to enable them to exercise their rights on equal terms.[36] Human rights are inalienable and indivisible. The state of mental or physical health does not in any way detract from them. A society can function in harmony and continue to develop only when the needs of all its members are being recognised and

[34] See *Protocol No. 12 to the European Convention on Human Rights* which was signed in Rome on 4th November 2000.
[35] See *Case of A.-M. V. v. Finland* [2017-03-23]. Judgement of the European Court of Human Rights, 2017, Application No. 53251/13, §§ 14, 19 and 89.
[36] See *Case of Gouri v. France* [2017-02-28]. Judgement of the European Court of Human Rights, 2017, Application No. 41069/11.

met to a reasonable extent. Application of the axiology of the human rights in the process of interpretation of norms can serve as a "protective barrier" against biological determinism and excessive interference of science into the genetic profile of a man.

Conclusions

In the centre of the right to live, there are the human beings with their genetic structure, physical, emotional and intellectual spheres. The highest value for every person is the protection of life, health and respect for privacy in the process of treatment. Accepting the axiom of the individuality of a human being, the focus has been placed on the protection of health of people affected by mental disorders. Mental health is a social and normative value protected by the legislator. Physical and psychological wellness impacts every other area of life.

Protection of mental health constitutes a *common obligation* which helps to see duties in a broader light and serves to emphasize common values. Application of universal axiology may be conducive to formulation of perspective regulations, faster assimilation of values into the domestic and international law, especially pertaining to the questions of fundamental importance for the protection of health and psycho-physical and genetic integrity of an individual.

References

ALMAGHRABI, M., M. MAJRASHI, D. DESAI, A. FUJIHASHI, J. DERUITER, C. R. CLARK and M. DHANASEKARAN. Global Health Impact of Major Classes of "Designer Drugs": Structural, Pharmacological and Toxicological Overview. In: *Alzheimer's Disease & Treatment* [online]. Reno: MedDocs Publishers, 2018, pp. 1-10 [cit. 2019-10-22]. Available at: https://meddocsonline.org/ebooks/alzheimers-disease-and-treatmen/global-health-impact-of-major-classes-of-designer-drugs-structural-pharmacological-and-toxicological-overview.pdf.

BAUMANN, M. H., E. SOLIS, L. R. WATTERSON, J. A. MARUSICH, W. E. FANTEGROSSI and J. L. WILEY. Bath Salts, Spice, and Related Designer Drugs: The Science behind the Headlines. *The Journal of Neuroscience*. 2014, vol. 34, no. 46, pp. 15150-15158. ISSN 0270-6474.

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Case of A.-M. V. v. Finland [2017-03-23]. Judgement of the European Court of Human Rights, 2017, Application No. 53251/13.

Case of Gouri v. France [2017-02-28]. Judgement of the European Court of Human Rights, 2017, Application No. 41069/11.

Case of H. M. v. Switzerland [2002-02-26]. Judgement of the European Court of Human Rights, 2002, Application No. 39187/98.

Case of Mihailovs v. Latvia [2013-01-22]. Judgement of the European Court of Human Rights, 2013, Application No. 35939/10.

Case of Mockutė v. Lithuania [2018-02-27]. Judgement of the European Court of Human Rights, 2018, Application No. 66490/09.

Case of Petukhova v. Russia [2013-05-02]. Judgement of the European Court of Human Rights, 2013, Application No. 28796/07.

Case of Riera Blume and Others v. Spain [1999-10-14]. Judgement of the European Court of Human Rights, 1999, Application No. 37680/97.

Case of Varbanov v. Bulgaria [2000-10-05]. Judgement of the European Court of Human Rights, 2000, Application No. 31365/96.

Civil Code of 23rd April 1964 [1964-04-23]. Journal of Laws, 1964, no. 16, item 93, as amended.

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: European Disability Strategy 2010 – 2020: A Renewed Commitment to a Barrier-free Europe [2010-11-15]. COM (2010) 636 final.

Constitution of the Republic of Poland of 2nd April 1997 [1997-04-02]. Journal of Laws, 1997, no. 78, item 483, as amended.

Convention for the Protection of Human Rights and Fundamental Freedoms [European Convention on Human Rights].

ČELKIS, P. and E. VENCKIENĖ. Concept of the Right to Health Care. *Jurisprudencija*. 2011, vol. 18, no. 1, pp. 269-286. ISSN 1392-6195.

Decree of the Council of Ministers on Regarding the National Programme for Mental Health Protection for the Years 2017 – 2022 [2017-02-08]. Journal of Laws, 2017, item 458.

Decree of the Minister of Health on Regarding the Detailed Procedures and the Manner of Operation of the Ombudsman for the Rights of Patients

of Psychiatric Hospitals [2006-01-13]. Journal of Laws, 2006, no. 16, item 126, as amended.

DIKRANIAN, K. The Amazing Brain. *Biomedical Reviews*. 2015, vol. 26, pp. 1-12. ISSN 1310-392X.

Guide on Article 5 of the European Convention on Human Rights: Right to Liberty and Security [online]. Strasbourg: European Court of Human Rights, 2019. 57 p. [cit. 2019-10-22]. Available at: https://www.echr.coe.int/Documents/Guide_Art_5_ENG.pdf.

HALL-CLIFFORD, R. and R. COOK-DEEGAN. Ethically Managing Risks in Global Health Fieldwork: Human Rights Ideals Confront Real World Challenges. *Health and Human Rights*. 2019, vol. 21, no. 1, pp. 7-18. ISSN 2150-4113.

International Covenant on Civil and Political Rights.

International Covenant on Economic, Social and Cultural Rights.

LAUREN, P. G. The Foundation of Justice and Human Rights in Early Legal Texts and Thought. In: D. SHELTON, ed. *The Oxford Handbook of International Human Rights Law*. 1st ed. Oxford: Oxford University Press, 2013, pp. 163-193. ISBN 978-0-19-964013-3.

Living Conditions in Europe: 2018 Edition. 1st ed. Luxembourg: Publications Office of the European Union, 2018. 143 p. ISBN 978-92-79-86497-1.

McCRUDDEN, Ch. *Human Dignity and Judicial Interpretation of Human Rights*. 1st ed. New York: New York University School of Law, Institute for International Law and Justice, 2008. 68 p. International Law and Justice Working Papers, no. 2008/8. ISSN 1552-6275.

MEIER, B. M., D. P. EVANS, M. M. KAVANAGH, J. M. KERALIS and G. ARMAS-CARDONA. Human Rights in Public Health: Deepening Engagement at a Critical Time. *Health and Human Rights*. 2018, vol. 20, no. 2, pp. 85-91. ISSN 2150-4113.

Mental Health Legislation & Human Rights. 1st ed. Geneva: World Health Organization, 2003. 50 p. Mental Health Policy and Service Guidance Package. ISBN 92-4-154595-X.

Mental Health Protection Act [1994-08-19]. Journal of Laws, 1994, no. 111, item 535, as amended.

Protocol No. 12 to the European Convention on Human Rights.

SOCIETAS ET IURISPRUDENTIA
2019, ročník VII., číslo 4, s. 98-112
http://sei.iuridica.truni.sk
ISSN 1339-5467

STAFFEN, M. R. and M. ARSHAKYAN. About the Principle of Dignity: Philosophical Foundations and Legal Aspects. *Seqüência (Florianópolis)*. 2017, vol. 38, no. 75, pp. 43-62. ISSN 0101-9562.

The Right to Health [online]. 1st ed. Geneva: United Nations, Office of the United Nations High Commissioner for Human Rights, 2008. 45 p. [cit. 2019-10-22]. Fact Sheet, no. 31. ISSN 1014-5567. Available at: https://www.ohchr.org/Documents/Publications/Factsheet31.pdf.

WHO Resource Book on Mental Health, Human Rights and Legislation: Stop Exclusion, Dare to Care. 1st ed. Geneva: World Health Organization, 2005. 181 p. ISBN 92-4-156282-X.

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