

## ENSURING THE PRINCIPLE OF NON-DISCRIMINATION IN HEALTH CARE

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### Abstract

The article focuses on the problems that arise in the process of realization by people of their right to health in the context of observance of the principles of non-discrimination and equality. The issue of sufficiency of funds allocated for health care is mentioned as it has a decisive influence on the availability for people to enjoy their right to health, as well as on people's possibility to use medical care. The paper follows the principles of analysis of problems related to discrimination against poor groups for whom access to health can be blocked by direct or disguised discrimination.

The research target audience was mental health patients. The research aimed to explore current state of affairs and further needs in the area of human rights of persons with mental illness in the process of providing them with medical assistance.

The above goal specified the list of respective tasks that included the analysis of international regulatory framework in order to ensure the rights of people with mental illnesses, the review of available statistical data on persons with mental illnesses, the identification of typical forms of manifestation of violations of rights in relation to persons with mental illnesses, the study and evaluation of the current approaches to the treatment of people with mental illnesses, the outline of measures by the state and society to ensure the rights of people with mental illness. The research findings laid grounds for recommendations to ensure mental health patients' rights in the course of medical assistance at international, national, individual levels.

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**Keywords:** Non-discrimination in healthcare, human rights, mental health patients.

### 1. INTRODUCTION

Ensuring the principles of non-discrimination and equality is an important task for States in the context of the full realization by citizens of their right to health. First of all, it should be noted that the adequacy of funds allocated to health care has a decisive impact on the availability of people's enjoyment of their right to health, although in many countries the emphasis is on the patients' own opportunities to gain access to the proposed medical services and treatment. The ability of people to use health care depends not only on their financial status and the availability of funds to pay for health services provided and the cost of medicines, but also on the additional costs that may arise, for example, in forced relocation or hospitalization, which are

associated with elementary living conditions, such as, for example, sufficient food and safe drinking water, normal sanitation and hygiene conditions, sufficient for living housing, the availability of the necessary amount of clothing, physical security. All these seemingly incidental costs may prove impossible for the poorest sections of society. The focus is primarily on discrimination against poor groups for whom access to health care can be blocked by direct or disguised discrimination. This category most often includes women, children, people with disabilities, people with HIV / AIDS, migrants and members of their families.

The foregoing situation makes it urgent to study the issue of the situation with discrimination in the field of health care in relation to the most vulnerable segments of the population. As the target audience, the present research explores the situation regarding mental health patients.

The research goal is to study the current state and prospects for ensuring human rights of persons with mental illness in the process of providing them with medical assistance.

The achievement of this goal required a number of tasks to be implemented:

- to trace the continuity and development of the international regulatory framework in order to ensure the rights of people with mental illnesses
- to analyze available statistical data on persons with mental illnesses
- to identify typical forms of manifestation of violations of rights in relation to persons with mental illnesses
- to study and evaluate the current approaches to the treatment of people with mental illnesses
- to identify measures by the state and society to ensure the rights of people with mental illness.

## **2. RESEARCH METHODOLOGY**

The research methodology included a number of stages.

The first stage focused on the international legal framework to protect people with mental disabilities from their human rights discrimination in healthcare

The following documents shaped the theoretical background for the analysis: Constitution and other documents of the World Health Organization, International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of Persons with Disabilities, Reports of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health in the UNO Human Rights Council, Convention on the Rights of Persons with Disabilities, 2030 UNO Agenda for Sustainable Development.

The second stage of the research focused on the world statistics regarding people with various mental illnesses. The data were taken from a number of sources including the World Bank and Reports of the UNO Special Rapporteur.

The next step aimed to outline common forms of human rights discrimination in healthcare regarding peoples with mental disorders. The data was taken from the UNO Human Rights Council reports of the Special Rapporteur and academic research, as well.

Further on, the analysis included the research and evaluation of current approaches (models) to treatment and the treatment formats adopted in the health care system for people with mental illness.

Finally, the research explored the role of the State in ensuring human rights of people with mental disorders and shed light on the importance of raising target audiences' awareness.

## **3. RESEARCH FINDINGS AND DISCUSSION**

### **3.1 International Legal Framework to Protect People with Mental Disabilities from Their Human Rights Discrimination in Healthcare**

The WHO constitution states that "the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition" (WHO Constitution, 1946, p.1).

The international legal framework clearly allows to assert that the possibility of access for the population to medical services falls into the category of basic obligations of the States Parties to the International Covenant on Economic, Social and Cultural Rights of 1966 (International Covenant..., 1966, p.32).

General Comment № 3 of the Committee on Economic, Social and Cultural Rights reaffirms that States Parties to the ICESCR have a fundamental obligation to ensure that at least the minimum basic levels of each of the rights enshrined in the Covenant are met, including basic health care (Committee... General Comment № 3, 1990)

It seems particularly important to emphasize the following points.

These core obligations include: ensuring the right of access to health facilities, goods and services on a non-discriminatory basis, especially for vulnerable and socially excluded groups; ensuring access to minimum basic nutrition that is adequate in terms of nutritional value and safe, in order to ensure that every person is free from hunger; access to basic housing and sanitation and adequate supply of safe drinking water; provision of essential medicines that are periodically identified in the World Health Organization (WHO) Program of Action for Essential Drugs; ensuring the equitable distribution of all health facilities, goods and services; adoption on the basis of available epidemiological data and the implementation of a national public health strategy and action plan that takes into account the health needs of the entire population.

CESCR identifies the priority tasks arising from these basic obligations of States parties to the Covenant: ensuring maternal health (in the prenatal and post-natal periods) and children; providing of vaccinations against major infectious diseases; taking measures to prevent and manage epidemic and endemic diseases and control them; implementing educational activities and access to information related to major medical problems in society; ensuring the proper training of health workers (International Covenant..., 1966).

It should be emphasized that the main obligations of the participating States focus on "equality" and "non-discrimination" in the field of health and access to health care "for everyone."

Reports of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health in the UNO Human Rights Council clearly map the absence of discrimination in ensuring the right to health within the international law framework: in accordance with the provisions of international human rights law, discrimination against people with mental illness in terms of their rights to access to health care and the basic elements of the right to health is prohibited. States shall ensure the access of the entire population to high-quality medical facilities, goods and services without any discrimination (Interim Report of the Special Rapporteur 2012).

The 2030 Agenda goals include the focus on mental health: Goal 3 strives to ensure healthy lives and promote well-being at all ages, target 3.4 promotes mental health (UNO Agenda 2016).

All in all, the study allows for comprehensive approach to the concept of non-discrimination in healthcare regarding human rights of people with mental disabilities.

The next step of the research focused on the statistics issues.

### **3.2 World Statistics on People with Mental Disabilities**

The reports of the Special Rapporteur to the UNO Human Rights Council provide a number of figures. Thus, every fourth person in the world suffers from a mental disorder in one way or another at a certain stage of his life.

Currently, about 450 million people in the world suffer from mental and neurotic disorders or have psychosocial problems of the psyche. And only very few of this number receive treatment, medical services and support. And even if they get it all, then often in insufficient form.

Mental and behavioral abnormalities are, according to some estimates, around 12 percent of the total number of diseases, and in most countries, the budget allocated to these needs is less than one percent of the total funds allocated to health care. Treatment of mental disorders and medical care in connection with mental illness are often not covered by health insurance.

More than 40 per cent of countries do not have a clear strategy for the treatment of mental illness, and more than 30 per cent do not have health programs to treat such diseases.

Over 90 per cent of countries do not have a strategy for the treatment of mental illnesses that includes children and adolescents.

The above data convincingly prove that the problem of mentally retarded people is one of the most neglected problems; it is, as it were, a "invisibility problem" in modern society (Report of the Special Rapporteur ... 2005).

On the other hand, mental health is a critical issue in terms of economic development. The world bank data

adds that depression alone affects «350 million persons, depression was estimated to cost at least US\$ 800 billion in 2010 in lost economic output, a sum expected to more than double by 2030» (The World Bank about depression 2017).

Meanwhile globally, less than seven per cent of health budgets is allocated to address mental health. In lower-income countries, less than \$2 per person is spent annually on it (WHO, Mental Health Atlas 2014).

The above statistics persuade that the international community and national states should turn to the challenge that mental health poses to the contemporary society.

### **3.3 Forms of Human Rights Discrimination in Healthcare Regarding Peoples with Mental Disabilities**

Reports of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health in the Human Rights Council and academic research findings allow us to state that the problem is universally ignored, the exact number of such patients is unknown. Where treatment is still available, patients often suffer from various violations of their rights. This is most often the case in specialized medical institutions, such as psychiatric hospitals, institutions for people with mental and intellectual disabilities, homes for the elderly, boarding houses, social assistance institutions, orphanages and shelters, and prisons.

The above sources analysis makes it possible to outline most common forms of human rights discrimination in healthcare regarding peoples with mental disorders.

Persons with mental illness are often against their will placed in psychiatric hospitals and clinics, where their human rights are grossly violated; they are subjected to ill-treatment, including violence and torture; rape and sexual abuse by other patients or medical personnel; forced sterilization; chaining to bed for long periods of time. In some cases, patients are kept in cages; treatment is carried out forcibly without the consent of patients; they are treated with the procedure of electro-convulsive therapy (ECT) without conducting anesthesia sessions and introducing muscle relaxants. The medical facilities do not have the necessary sanitary and hygienic conditions.

A large percentage of people with mental illnesses are kept in prisons. In many cases, people with serious mental disorders who have not committed crimes or committed minor crimes are sent to prisons instead of being placed in specialized hospitals for the mentally ill. The conditions of prisoners in prisons (high density and tightness of the cells, the lack of personal space and the possibility of seclusion, detention in solitary confinement and violence) exacerbate the mental state of the mentally ill.

Women with mental illnesses are particularly vulnerable to the use of forced sterilization and sexual abuse of their personality. They often become objects of violations of the rights of physical integrity of the person and violations of their rights in the field of reproductive health.

In those cases where the public stigmatization of persons suffering from mental disorders is additionally superimposed on discrimination on other grounds, such as race or ethnicity, these individuals become particularly vulnerable in terms of exposure to risks of violations of their human rights (Riedel 2009).

### **3.4 Treatment Models and Formats in the Field of Mental Health**

Both the Special Rapporteur and Academic scholars criticize the dominant biomedical model in the field of healthcare (Report of the Special Rapporteur...2017). The model uses neurobiological aspects as the basis for interventions (Bolton, Hill 2004). Nonetheless, many theories that supported this model have not found any justification in further research. Scholars mention that "Diagnostic tools, such as the International Classification of Diseases and the Diagnostic and Statistical Manual of Mental Disorders, continue to expand the parameters of individual diagnosis, often without a solid scientific basis" (Insel 2013). Critics of the above situation voice their concerns as the overexpansion of diagnostic categories could lead to a narrowing acceptance of human diversity (Priebe, Burns, Craig 2013).

Moreover, recent data confirm that the field of mental health continues to be over-medicalized, psychiatry and the pharmaceutical industry foster clinical practice first-line treatment with psychotropic medications (Kirsch, 2015 Healy, 2006, White 2013).

In contrast to the above it seems really important to look at the psychosocial model that "has emerged as an evidence-based response to the biomedical paradigm" (Cooke 2014).

The model takes into account biological factors but goes beyond them to consider psychological and social

conditions as factors that potentially could lead to poor mental health. The relevant conditions could be used as short-term and low-cost interventions that are used appropriately through regular care. Thus, they can help improve social competencies, develop self-esteem and dignity (Report of the Special Rapporteur...2017).

We follow the thought of those scholars who argue that in order to comply with the right to health any mental health system should balance the biomedical and psychosocial models to avoid the arbitrary dominance of biomedical model (Rose, Abi-Arched, 2013, Bracken 2014).

violations of their rights in the field of reproductive health.

In those cases where the public stigmatization of persons suffering from mental disorders is additionally superimposed on discrimination on other grounds, such as race or ethnicity, these individuals become particularly vulnerable in terms of exposure to risks of violations of their human rights (Riedel 2009).

### **3.5 Role of State in Ensuring Human Rights of People with Mental Disabilities**

States are required to take the necessary measures to provide comprehensive psychiatric care and treatment by which people could be ensured human dignity, including medical treatment, physical therapy, outpatient care, inpatient treatment, boarding, rehabilitation and face-to-face care with mental disorders. Applied programs should be developed that promote the development of independent behavior skills for persons with mental retardation. They should be assisted in finding suitable housing, employment, material assistance should be provided so that these persons have sufficient income for their livelihood.

For mentally retarded children, appropriate training programs should be developed with the involvement of children in the active social life of the team. It should also be possible to substitute for rest of family members of the patient who cares for the patient 24 hours a day. With this variant of the solution of the problem it would be possible to avoid placing the patient in inpatient or involuntary treatment. In order to ensure equal rights for citizens in relation to the right to health, it is necessary to prepare a sufficient number of highly qualified human resources, including psychologists, psychotherapists, and middle-level medical personnel. These measures will ensure the integration of patients with various mental disorders into public life. General practitioners and primary care physicians should have the necessary training to diagnose patients with mental problems and their successful treatment.

However, various forms of social exclusion and discrimination continue to impede the realization of the right to health for people with mental illness. For example, they often face discrimination in accessing primary health care services or are discriminated against in the provision of these services, which often contributes to the fact that such patients tend to refuse to provide medical services and treatment at all (Monitoring psychiatric institutions ...2016)

While most families provide proper care for patients with mental illness, in some cases, the exclusion of these patients by society can lead to their unjustified identification in specialized institutions that often do not have the necessary specialization in the treatment of the patients with mental disabilities. Therefore, human dignity and other human rights of these patients are at high risk. Decisions on the isolation of persons suffering from mental illnesses, including the risks associated with their unauthorized identification in specialized institutions, are knowingly discriminatory, which contradicts the right of these patients to engage in active life of society, though this right is enshrined in international human rights treaties.

The lack of accurate information on mental health problems, as well as inadequate medical care and support often lead to wrong and illegal decisions. The dissemination of truthful, reliable information about mental illnesses and the human rights of people suffering from such ailments is an important part of the national strategy to counter social exclusion and discrimination.

Public authorities bear the responsibility with respect to training activities and providing access to health information at the local level. The state should undertake adequate measures to raise the awareness of health workers and medical personnel in the field of psychiatry regarding human rights issues (Advocacy actions... 2017).

This would contribute to ensuring equal access for all people to medical care and treatment, as well as respect for the human rights and human dignity of people with mental disease and being on treatment in medical institutions

## **4. CONCLUSION**

The research findings show that under international human rights law, states are not only required to prohibit

discrimination, but they also have the obligation to ensure equal opportunity for all people, including people with mental illnesses and disabilities to enjoy their right to health. This right covers a large set of settings, for instance, the right to the same medical services and services as other members of society, the right to access to medical and social services that help them gain independence and independence, serve as a preventive measure for the emergence other diseases and help them to become more actively involved in social life.

The implementation of the above rights requires special measures to be taken in the interests of particular groups of people. For example, States should ensure that adolescents with mental illnesses have access to the health services that they require in accordance with the nature of their disease. The Committee on the Rights of the Child emphasizes the crucial importance of the attention that must be given to the needs and problems associated with the sexual development of adolescents with mental and mental disabilities.

Very often, the restrictions imposed by the society in relation to the mentally disabled persons lead to disability of the latter, which is an obstacle to obtaining equal opportunities for them to enjoy a wide range of human rights and fundamental freedoms, including the right to education, the right to work, the right on personal life, the right to social security, the right to normal housing conditions, adequate food.

It should be borne in mind that the allocation of inadequate funds can also lead to unintentional discrimination. Unfortunately, the allocation of little funding from the state budget to the treatment of people with mental illness in most countries of the world is a significant obstacle for these target audiences to fully use their right to health on the basis of equality of opportunity. That is why states should develop their health policy more thoroughly in order to ensure the principles of non-discrimination and equality for all categories of citizens without exception.

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