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**«The rights of persons with mental health problems:
conformity of the national law
with the international standards.
The context of adherence of human rights
in neuropsychiatric social care institutions»**

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Видання присвячене аналізу забезпечення прав осіб із проблемами психічного здоров'я у відповідності із практикою міжнародних договорів. У звіті приділено увагу реалізації правоздатності, дотримання права на свободу у контексті примусової госпіталізації, аспекту інформованої згоди. Детально проаналізовано дотримання прав людини у психоневрологічних інтернатах. На основі здійсненого аналізу підготовлено рекомендації щодо можливості впровадження міжнародних стандартів до національного правового поля.

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The publication is dedicated to the analysis of the rights of persons with mental health problems in accordance with the practice of international treaties. The report paid attention to implementation capacity, respect of freedom in the context of detention, aspects of informed consent. A detailed analysis of human rights in neuropsychiatric social care institutions. On the basis of the analysis there were prepared recommendations regarding the possibility of implementing international standards to the national legal framework.

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Forewords



The situation of persons with mental health problems remains a serious challenge for Ukraine's obligations in human rights. Permanent dependence of such persons on other people, the dominant roles of special residential institutions for medical care and social services are the main characteristics of public policy which results in stigmatization and discrimination of the above mentioned category. Aspects of capacity, detention, and human rights adherence in psychiatric institutions and neuropsychiatric social care repeatedly have been the subject of attention of international and national human rights institutions. It is important to take account of the national legal framework of international treaties experience in this field, in particular the UN Convention on the Rights of Persons with Disabilities, the European Court of Human Rights. The proposed analytical report attempted recommendations and steps for implementation of international standards, the implementation of which will let saying about the increasing participation of persons with mental health problems in

making decisions that affect them, the implementation mechanisms of services for this category by their location. We hope that the given analysis of the problems and provided recommendations will help governments in the elaboration of strategic documents and programs on the adherence of rights of persons with mental health problems.

We express our sincere gratitude for overall assistance in preparing this publication for the Ukrainian public organization "All Ukrainian Coalition for Persons with Intellectual Disabilities", Ukrainian public organization of disabled Consumers of Mental Health Care "USER". We express respect and gratitude to the staff of the Department of social services for the elderly at the Ministry Social Policy of Ukraine for assistance in conducting public examination of the Ministry, as well as for the support in organizing monitoring visits to psychoneurological social care institutions. We are grateful to the experts of the partner organizations that participated in preparing the study: Kravchenko Raisa – executive director of the All-Ukrainian NGO "National Assembly of People with disabilities of Ukraine", Imerelli Ruslan – the president of Ukrainian public organization of disabled Consumers of Mental Health Care "USER".

We would like to express our gratitude to the United States Agency for International Development (USAID) for providing the financial support to conduct this research.

Executive Director
of the Ukrainian Helsinki Human Rights Union

Arkadiy Bushchenko

List of abbreviations

ATO	Anti-terrorist operation
WHO	World Health Organization
ECtHR	European Court of Human Rights
IRPD	The individual rehabilitation program for disabled
Committee RPD	Committee on the Rights of Persons with Disabilities
CRPD	The UN Convention on the Rights of Persons with Disabilities
MSPU	Ministry of Social Policy of Ukraine
MHCU	Ministry of Health Care of Ukraine
PSI	Psychoneurological social care institutions

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Introduction

Modern international treaties on human rights to which Ukraine joined involve changing attitudes towards persons with mental health problems — one of the most vulnerable social groups. Providing maximum legal autonomy, reducing the role of special institutions for inclusion in the community are some of the main features of the new approach. Ukraine, unfortunately, in attitude to persons with intellectual and psychosocial disabilities, remains within the coordinates of the previous model, showing respect for the rights of this category of society in "peculiar" way: trying to protect persons with psychosocial disabilities, the state makes them powerless; in order to give them social support hides them behind the two-meter fence places of captivity; and for the people whose views are inconvenient, often uses in the form of argument forensic psychiatric examination. The above trends have repeatedly been the subject of attention of the European Court of Human Rights and other international institutions. The above trends have been repeatedly the subject of attention of the European Court of Human Rights and other international institutions.

According to statistics, in Ukraine there are about 1.2 million persons with mental health problems, among them — more than 300 thousand persons with intellectual, psychosocial disabilities. More than 32,000 people declared incapacitated.

The comparison of compliance of national legislation with the Convention on the Rights of Persons with Disabilities states that persons with psychosocial and intellectual disabilities, in fact, are limited in their capacity to implement the rights provided by this international document: from legal incapacity and maintenance because of disability in places of captivity to the deprivation of the voting right. Ignoring person's thought about where and with whom he wants to live, quantity and quality of social and health services raises the threat to the fundamental rights.

The proposed study attempted to analyze the compatibility of national legislation with international human rights standards in the field of mental health care and ensuring the individual rights of its users.

Following components have been analysed:

- the implementation of the legal capacity of persons with mental health problems, including participation of persons declared incapacitated in taking decisions that affect them;
- placing and keeping in psychiatric institutions and neuropsychiatric social care institutions in the context of the right to liberty and security;
- treatment of persons with mental health problems in neuropsychiatric social care institutions and its compliance with human rights;
- realization of the right to choose their residence and deinstitutionalisation as an alternative to staying in a segregated environment.

Experts are aware that the conducted analysis does not cover the entire set of challenges in the field of rights of persons with mental health problems, however, expect the next part to focus more on the health care system and respect for human rights in psychiatric institutions.

Research Methodology. The main method of analysis is the analysis of documents. In particular, comparative analysis of the international human rights standards and their reflection in national legislation. International standards were combined into groups, respectively, of the United Nations and the Council of Europe standards. Most attention was paid to the standards of the Convention on the Rights of Persons with Disabilities (CRPD) and has worked out within the relevant committee practice its application. In addition, were analyzed strategic documents of the World Health Organisation.

Analyzed the practice of the European Court of Human Rights on the rights of persons with mental health problems in the context of Articles 3, 5, 6, 8, Convention for the Protection of Human Rights and Fundamental Freedoms. Also paid attention to policy of the Committee of Ministers, aimed at declaring ways to ensure the rights of persons with mental health problems.

To investigate the neuropsychiatric social care institutions system in January-May 2015 there was conducted public examination of the Ministry of Social Policy of Ukraine on human rights in neuropsychiatric social care institutions. There was made the comparison of the current Model Regulations with the project of the new

Regulations, currently developed by the Ministry. Additional consideration was subjected the statistics on the number of establishments and the dynamics of their density. In April 2015, the UHHRU experts carried out monitoring visits to Veselokutskyj (Kirovohrad region) and Illinsky (Dnipropetrovsk region) neuropsychiatric social care institutions. During the visits, were applied methods of analysis of internal documentation of the neuropsychiatric social care institution, monitoring of the living conditions of the wards, and conducted focus group surveys and interviews with the staff.

Preliminary results of the study were discussed at the round table on April 29, 2015, with the participation of the expert community and representatives of the organizations of persons with intellectual and psychosocial disabilities.

The structure of the study consists of three sections.

The first section deals with the evolution of international standards and experience in the field of the rights of persons with mental health problems. In the spotlight are the UN treaties, including the Convention on the Rights of Persons with Disabilities, standards and policy of the World Health Organization, the European Court of Human Rights, as well as the strategic directions of the Council of Europe in this area.

The second section is devoted to the national legal standards and their compliance with international instruments to which Ukraine has joined. The focus was on the implementation capacity of persons with mental health problems; risks restricting the right to freedom related to detention and forensic psychiatric examination; medical intervention and informed consent.

The third chapter analyzes the practical aspects of the implementation of both international standards and national legal standards in neuropsychiatric social care.

The studies are finished by the prepared by the experts recommendations aimed at amending legislative and regulatory acts, implementation of which will talk about the shift towards implementing the best international practices.

We anticipate that the proposed research will be useful to representatives of the legislative and executive branches of government responsible for the formulation and implementation of policy in the field of mental health care, and initiate fruitful discussion among the experts.

Section I. Overview of international standards guaranteeing the rights of people with mental health problems

Equality before the law. Implementation of legal capacity suggests realization of socio-political, socio-economic and cultural rights. It must be noted that persons with disabilities are discriminated while trying to realize their own capacity. This applies particularly to persons with psychosocial and intellectual disabilities who often in general are excluded from decision-making process. In the context of the conducted analysis, the implementation of the capacity is directly related with: the right to liberty (keeping a person in psychiatric institutions); freedom from torture (aspect of compulsory treatment and detention conditions in institutions); access to justice (right to appeal against a decision relating to capacity and placement in an institution); choice of residence and inclusion in a community (stay in segregated environment and lack of services at the community level).

Yet in 2005, the World Health Organization noted that "capacity is one of the criteria of legal capacity," a person can not be considered incapable on the ground that he is not competent to make decisions in a certain period of time."¹

However, drastic changes in the understanding of the legal capacity of people with disabilities came after the 2006 UN Convention on the Rights of Persons with Disabilities. Paragraph 2 of Article 12 of the Convention states that all persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.² Determining the capacity in the international practice is interpreted as the ability to have the rights and ability to exercise these rights. The best understanding of the capacity, which should be used in the national legal framework, is provided by the P.2, Art. 15 of the Convention on the Elimination of All Forms of Discrimination against Women: "States-parties shall give women equal to men social standing and equal opportunities for its implementation. In particular, they provide them with equal rights when entering into contracts and managing property, and equal treatment to them at all stages of the proceedings in courts and tribunals".³

Considering the unequal treatment of Article 12 of the CRPD by the States-parties, the Committee of the RPD in May 2014 adopted general comments, which, in particular, explains that "capacity" and "legal capacity" are "... two different concepts. If legal capacity means: firstly, ownership rights and responsibilities; secondly, the ability to realize the rights and obligations, the mental capacity therefore means person's skills to make decisions, which, of course, are different with people and can vary depending on many factors, including environmental and social factors."⁴ In general, the Committee considers that "the concept of mental capacity itself is very contradictory. Unlike the general ideas, mental capacity does not act as objective, evidence-based phenomenon that occurs naturally. Mental capacity defines political and social conditions, as well as a variety of disciplines, professional practices and aspects that play a dominant role in assessing mental capacity."⁵

The Committee emphasizes that intellectual breaches and other discriminatory references are not legitimate reasons for denial of legal capacity (legal status and capacity): "According to Article 12 of the Convention assumed or actual mental capacity constraints should not be used for deprivation of legal capacity."⁶

The next part of the above mentioned article of the Convention imposes on the states the obligation to provide people with disabilities access to the support they may need during their implementation of their legal

¹ The WHO Resource Book on Mental Health, Human Rights and Legislation. – WHO. – 2005 // http://www.who.int/mental_health/policy/legislation/Resource%20Book_Eng2_WEB_07%20%282%29.pdf?ua=1

² Convention on the Rights of Persons with Disabilities // http://zakon1.rada.gov.ua/laws/show/995_g71 // <http://www.un.org/disabilities/convention/conventionfull.shtml>

³ The Convention on the Elimination of All Forms of Discrimination against Women. // <http://www.un.org/womenwatch/daw/cedaw/cedaw.htm>

⁴ General comment No. 1 (2014) Article 12: Equal recognition before the law / Committee on the Rights of Persons with Disabilities. // <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/GC.aspx>

⁵ Ibid.

⁶ Ibid.

capacity. From the above said it appears that for the people with disabilities there need to be created conditions for their maximum participation in making decisions that affect them. The purpose of the support is to deliver information to a person about the nature of the decision in the most convenient way, resulting in the independent selection by the person of the specific solutions. In this regard the UN Committee on the Rights of Persons with Disabilities recommended the States-parties "... to review the legislation which allows guardianship and care and take actions to develop laws and policies aimed at implementing the model of the supported decision-making that takes into account the will and the desire of people with disabilities."⁷

At the level of the Council of Europe the meaning of the legal capacity and its realization by the persons with disabilities is identified in the Action Plan 2006-2015 and recommendation documents of the Commissioner for Human Rights.

In the strategic document of the Commissioner of the Council of Europe of 2012 on the legal capacity of persons with psychosocial and intellectual disabilities, the following steps necessary for the implementation by the European legal systems are proposed: "First, it is necessary to cancel mechanisms that ensure full plenary guardianship and incapacity; capacity must be extended to persons with disabilities. Availability of intellectual and/or psychosocial abuse is not the reason for revocation of the benefit from the presumption of "capacity". Secondly, we need to review and reform discriminatory legislation depriving persons with disabilities of human rights (e.g. the right to a fair trial, the right to vote or the right to property) because of their disability or presence of a violation. Third, state and local authorities, courts, health care and other service providers must make their services more accessible to people with disabilities. Reasonable accommodation for persons with disabilities who are trying to get access to it – this is minimum. This includes providing information in simple and understandable language, the presence of the person who provides support in connection with the will of the interested person."⁸

As an example of best practices in support of persons with psychosocial disabilities can be given Swedish model of personal ombudsmen – professionals who constantly work with specific individuals without having obligations before the institutions and acting only when a person needs it. The characteristics of this form are the lack of bureaucratic procedures for obtaining a personal ombudsman, flexible schedule of work, convenience of the service through the ombudsman's response to priority human needs.⁹

Another successful support practice is the Canadian model of agreements on representation – the mechanism of representation of person's interests in cases where national law does not recognize his /her ability to make decisions. In this model, a person chooses a representative, it is important that the person could communicate to the extent that allows to express a desire to receive help and realize the value of the representation agreement, and the relations between the individual and the representative must be trusting.¹⁰

European Convention for Protection of Human Rights and Fundamental Freedoms does not directly emphasize the implementation of the legal capacity, however, the European Court of Human Rights has worked out wide practice in these matters, including – the capacity to implement by the persons with mental health problems and intellectual disabilities.

In the context of Article 5 of the Convention a certain number of cases concerned the connection between the loss of capacity, insertion under custody and as a consequence – the forced placement of a person in an institution or treatment. As a result of the loss of capacity by the decision of a custodian the person is placed in a residential or psychiatric institution, which that person may leave only with the custodian's agreement. The Court finds that under the national law such detention is legitimate, but the Court concludes that the national legal framework does not provide enough opportunities for protection that, consequently, leads to a violation

⁷ General comment No. 1 (2014) Article 12: Equal recognition before the law / Committee on the Rights of Persons with Disabilities. // <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G14/031/20/PDF/G1403120.pdf?OpenElement>

⁸ Who gets to decide? Right to legal capacity for persons with intellectual and psychosocial disabilities. // <https://wcd.coe.int/View-Doc.jsp?id=1908555> Там само.

⁹ Ibid.

¹⁰ Ibid.

¹¹ Legal capacity of persons with intellectual disabilities and persons with mental health problems. /European Union Agency for Fundamental Rights. Luxembourg: Publications office of the European Union, 2013. – P. 18. // Source // <http://fra.europa.eu/sites/default/files/legal-capacity-intellectual-disabilities-mental-health-problems.pdf>

of the Article 5 of the Convention.¹¹ In another case, the Court notes that the national legislation does not need periodic re-examination of the detention when placement is voluntary, however, the loss of capacity of the applicant does not allow him / her to personally apply for judicial protection against further detention. In the Court's view, this situation demonstrates the "insecurity of the legal framework" and violates Article 5 § 4 of the Convention.¹²

Regarding the right to a fair trial in the context of capacity the ECtHR goes out of several elements:

- the Right of the person to be heard in court during proceedings in respect of capacity. This right is realized through a personal appearance at the hearings and through various forms of representation. The Court notes that the presence of a person under guardianship should not deprive his ability to convey his views to the court.¹³

- That exactly the judge, not a psychiatrist must evaluate all the facts for decision making in matters relating to capacity. The Court observes that "the domestic judicial decisions should be based on the medical report, which provided a proper assessment of the patient's disability."¹⁴ However, to the opinion of the Court, "it would be desirable if the judge conducting the proceedings, checked whether the medical report is arbitrary, and also listened to witnesses and doctors."¹⁵

- Access to justice in the matters of review of a decision concerning disability.¹⁶ The Court notes that "a person must use effective mechanism for appeal concerning his placement in a psychiatric institution."¹⁷ It is necessary to establish reasonable terms for addressing disability issues by a person.¹⁸

ECtHR finds the link between the loss of the capacity and the right to respect for private and family life. Acquaring by the person of disability should not be an obstacle to the implementation of legal action, filing for disability pensions, participation in decision-making regarding treatment.¹⁹

Ukraine has repeatedly been the subject of attention of ECtHR in cases related to the consequences of the loss of capacity of persons with mental health problems. ECtHR draws attention to the lack in Ukrainian legislation of the opportunity for independent address of the person declared incompetent, to the court concerning the renovation of his capacity.²⁰

In addition, the ECtHR has repeatedly drawn attention to the problem of dependence of persons recognized incapable on custodian's decisions.

In view of the above said, Ukraine should immediately adopt legislation to which the European Court of Human Rights has repeatedly pointed out, namely: the possibility of personal address concerning the review of the decision to restrict capacity, concerning reduction of dependence of an incapable person on the custodian and increase of his legal capacity. Finally, in order to implement the UN Convention on the Rights of Persons with Disabilities, Ukraine should implement measures implementing the decision model based on consideration of the will and wishes of an individual.

The right to liberty. It must be noted that the mechanisms of detention of persons with mental health problems can result in violations of the right to freedom.

The question of detention at the UN level was raised back in 1991 in accordance with the principles of protection of persons with mental illness and improvement of mental health care "... any person can be forcefully hospitalized in a psychiatric facility as a patient, or the person already hospitalized as patient voluntarily, can be kept as the patient in a psychiatric hospital forcefully if and only if authorized for this purpose in accordance with the law by a qualified expert who works in the field of psychiatry, who will establish ... that the person suffers from a mental illness and determine (a) in the result of mental illness there is a serious threat of causing

¹² ECtHR, *Kędzior v. Poland*, No. 45026/07, 16 October 2012.

¹³ ECtHR, *Winterwerp v. the Netherlands*, No. 6301/73, 24 October 1979.

¹⁴ ECtHR, *Shtukaturov v. Russia*, No. 44009/05, 27 March 2008.

¹⁵ ECtHR, *X and Y v. Croatia*, No. 5193/09, 3 November 2011.

¹⁶ Legal capacity of persons with intellectual disabilities and persons with mental health problems. /European Union Agency for Fundamental Rights. Luxemburg: Publications office of the European Union, 2013. – P. 19

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ ECtHR, *Salontaji-Drobnjak v. Serbia*, No. 36500/05, 13 October 2009.

²⁰ ECtHR, *Nataliya Mikhaylenko v. Ukraine*, No. 49069/11, 30 May 2013.

immediate or imminent harm to that person or other persons, or (b) in the case of the person, whose mental illness is severe and mental abilities are weakened, refusal from hospitalization or detention of the person in psychiatric institutions can lead to a serious deterioration in his health or make it impossible to use the proper treatment that can be performed only upon admission to a psychiatric institution in accordance with the principle of the least restrictive alternative ... detention should be initiated for a short time, according to the domestic law, for examination or previous treatment to consider hospitalization or detention by a controlling body."²¹

Understanding of the control body is given in principle 17: "controlling body may be judicial or other independent and disinterested body established in domestic legislation and act in accordance with the provisions of domestic law."²² Among the tasks of the supervisory authority, the principles define "authority must conduct periodic checks of the case of compulsory treatment and causes of interference in accordance with the national law." While experts tend to believe that the Convention on the Rights of Persons with Disabilities "has sent into oblivion" these rules, the cited above allows for the tracking of the evolution of understanding of detention and the conditions under which such a form is possible.²³

In 2005 WHO in its Information Handbook of Mental Health suggested the following criteria, which should be taken into account to justify the need for detention:

The presence of a psychiatric disorder. The legislation of most countries recognizes this as the main criterion for detention, however, the severity and extent of mental disorder varies depending on the country. Some countries allow detention upon presence of certain types of disorders, others – upon presence of severe mental disturbance, the third countries use yet broader understanding of mental disorders for forced hospitalization.

High probability of direct and imminent danger. Criteria can be applied with maximum consideration of the interests of the patient, minimizing the damage to his health and safety of people close to him. An important aspect of the legislation is the aspect of forecasting of such danger.

The need for treatment. The criterion includes several characteristics: first, the disease is difficult (definition); secondly, weakening of mental abilities (capacity) must be convincingly proven; thirdly, there is the need for a convincing proof that the refusal of hospitalization could result in danger to a person (forecasting). This criterion, like the previous one, is debatable. Representatives of the interests of persons with psychiatric diseases recommend to abandon it in general.

During the hospitalization a therapy course has to be conducted. Forced hospitalization should be considered in the context of a therapeutic treatment as for the reason of drug use, so in case of other rehabilitation measures. These criteria can only be used as an alternative to the smallest – a person can not be hospitalized if there is a possibility of other ways to help, such as, for instance, medical care in the place of residence. The examination, which will determine the need for detention should be carried out by two independent experts. If their opinion is different, then a third expert should be invited.²⁴

According to the WHO Mental Health Atlas, involuntary treatment is not the subject of research, but, indirectly to compulsory treatment can be taken the lack of a multidisciplinary approach, social workers, community-based services for people with psychiatric disorders. However, in the WHO Mental Health Atlas in 2011 Ukraine is absent.

The interpretation of the freedom to liberty set forth in the UN Convention on the Rights of Persons with Disabilities, offers a slightly different understanding of involuntary hospitalization and involuntary placement. Paragraph b) of Article 14 insists that persons were not "deprived of their liberty unlawfully or arbitrarily, and that any deprivation of liberty was in conformity with the law, and the existence of disability must in no case justify a deprivation of liberty."²⁵ Committee on the Rights of Persons with Disabilities in paragraphs 1, 2 of the comments slightly expands understanding of this provision:

²¹ Principle 16 of the Resolution 46 / 119 "The protection of persons with mental illness and the improvement of mental health care" // <http://www.un.org/documents/ga/res/46/a46r119.htm>

²² Ibid.

²³ Involuntary placement and involuntary treatment of person with mental health problem. – European Union agency for fundamental rights. // <http://fra.europa.eu/en/publication/2012/involuntary-placement-and-involuntary-treatment-persons-mental-health-problems>

²⁴ The WHO Resource Book on Mental Health, Human Rights and Legislation. – WHO. – 2005. //

http://www.who.int/mental_health/policy/legislation/Resource%20Book_Eng2_WEB_07%20%282%29.pdf?ua=1

²⁵ The UN Convention on the Rights of Persons with Disabilities // <http://www.un.org/disabilities/convention/conventionfull.shtml>

1. The absolute prohibition of detention on the basis of disability. There are still practices in which state parties allow for the deprivation of liberty on the grounds of actual or perceived disability. In this regard the Committee has established that article 14 does not permit any exceptions whereby persons may be detained on the grounds of their actual or perceived disability. However, legislation of several states party, including mental health laws, still provide instances in which persons may be detained on the grounds of their actual or perceived disability, provided there are other reasons for their detention, including that they are dangerous to themselves or to others. This practice is incompatible with article 14 as interpreted by the jurisprudence of the CRPD committee.

2. Mental health laws that authorize detention of persons with disabilities based on the alleged danger of persons for themselves or for others. Through all the reviews of state party reports the Committee has established that it is contrary to article 14 to allow for the detention of persons with disabilities based on the perceived danger of persons to themselves or to others. The involuntary detention of persons with disabilities based on presumptions of risk or dangerousness tied to disability labels is contrary to the right to liberty. For example, it is wrong to detain someone just because they are diagnosed with paranoid schizophrenia.²⁶

Confirmation of the shift in the paradigm for receiving psychiatric help are also present in the Complex plan of action of the WHO in the sphere of mental health for 2013-2020, where there are no measures for forced treatment, and instead there are offered preventive measures, including community-based services, distribution of multidisciplinary approach, etc.²⁷

Experts tend to believe that officially WHO is avoiding the research concerning the compulsory treatment, although NGOs insist on its public discussion.

At the level of the Council of Europe the right to liberty in the context of detention and compulsory treatment should be considered in the context of Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms and the European Court of Human Rights on this article. Article 5 of the Convention, in particular, states: "1. Everyone has the right to liberty and personal inviolability. No one shall be deprived of his liberty save in the following cases and in accordance with the procedure established by the law... e) ..., the lawful detention of demented persons, alcoholics or drug addicts or vagrants."²⁸ On the development of legal practice of the ECtHR concerning this issue witnesses its statement that the term "mentally sick" is changing along with the development of research in psychiatry. Treatment methods become more flexible and public attitudes to mental illness are changing. A person can not be considered mentally ill if his views or behavior does not meet the standards of the community.²⁹

Notable is the formula, derived by the ECtHR in the context of Article 5 of the Convention: "Certain restrictions of human rights should be personalized to individual needs, must be truly justified, be result of the based on the human rights procedures and comparable to effective protection measures."³⁰

Forced placement of a person to a psychiatric institution may not be legitimate unless three minimum conditions are met: 1) an objective medical examination should reliably show that a person is mentally ill; 2) mental disorder must be in such extent that justifies that a person must undergo compulsory detention in a psychiatric hospital; 3) the need for a prolonged detention in a psychiatric hospital depends on the stability of such disease.³¹

Except for special cases a person may be deprived of liberty until it will be conclusively proven that the person is "mentally ill."³² However, the Court emphasizes the powers of the nation states concerning the con-

²⁶ Statement on article 14 of the Convention on the Rights of Persons with Disabilities. //

<http://www.ohchr.org/RU/NewsEvents/Pages/DisplayNews.aspx?NewsID=15183&LangID=E#sthash.AXuIM3vH.dpuf>

²⁷ Mental health Action plan 2013–2020. – WHO. – 2013. //

http://apps.who.int/iris/bitstream/10665/89966/1/9789241506021_eng.pdf

²⁸ The European Convention for the Protection of Human Rights and Fundamental Freedoms. //

<http://conventions.coe.int/Treaty/en/Treaties/Html/005.htm>

²⁹ ECtHR, GC, Stanev v. Bulgaria, no. 36760/06, 17 January 2012.

³⁰ Involuntary placement and involuntary treatment of persons with mental health problems. Published by FRA. //

<http://fra.europa.eu/en/publication/2012/involuntary-placement-and-involuntary-treatment-persons-mental-health-problems>

³¹ Ibid.

³² ECtHR, Winterwerp v. the Netherlands, No. 6301/73, 24 October 1979.

vincing evidence of psychiatric disorder of the person reserving the opportunity to ascertain whether there were enough evidence for the national courts to justify detention.³³ At the same time, the examination procedure should not be long-lasting.³⁴

The restriction or deprivation of liberty of a person with psychiatric illnesses would be lawful if it is carried out in a psychiatric hospital, clinic or other appropriate institution, but not in prison or even a medical department of the penitentiary system.³⁵

Not allowed is placement to a psychiatric institution according to the decision of the prosecutor's office, police and other non-judicial bodies. A person should have the right to challenge in court the legality of his placement to an institution.

When using psychiatric treatment it is necessary to carry out judicial supervision.³⁶ In particular, such supervision controls the term of stay in a psychiatric hospital.³⁷ Extension of stay must be based on the threat to the patient or his dangerous behavior, which must be confirmed by adequate evidence.³⁸

In the case of "Gorshkov against Ukraine", the Court insists: "The key guarantee under Article 5 (4) of the Convention is that the fact that the patient, which is kept in a psychiatric institution must have the right to judicial review by his own will" and because this he "...requires first of all the presence of independent legal means by which a person who is held, has the opportunity to appear before a judge who will determine the legality of the continued detention. Access of the person under detention to the judge should not depend on the good will of the administration of the institution where the person is held, be used at the discretion of management of the medical institution." Even a mechanism for automatic representation of the patient's interests can not be a substitute for the right of access to justice.³⁹

ECHR in its decisions, in particular, emphasizes on:

- the need of the presence of a person in the trial on detention; availability at the national level of the independent experts in hearing of the cases on detention;
- providing the possibility to appeal the decision on involuntary hospitalization;
- ensuring the possibility of obtaining legal assistance during hospitalization;
- the need for periodic reviews of the patient's state, and the ability to leave the establishment at his own will when a person has voluntarily agreed to hospitalization.⁴⁰

The Court also points to the need for careful study of evidence to prove the need for forced hospitalization.⁴¹ The Court confirms the illegality of a person's long stay in a psychiatric hospital without his consent. Furthermore, the Court considers unacceptable to restrict a person's communication with his family.⁴² The Court states the need for a properly mandated psychiatric examination.⁴³

For the illegal placement of a person to an institution he should receive compensation.

In addition to decisions of the ECtHR, deserves attention the provision of the Recommendations of the Committee of Ministers of the European Council 2004 (10). Article 17 of the Recommendations determined that the detention of a person is allowed in the presence of all the following criteria:

1. A person is suffering from mental disorders.
2. The health of a person is a risk of danger to himself or herself or to others.
3. Hospitalization has therapeutic target.
4. There are no less restrictive methods of care.

³³ ECtHR, *Luberti v. Italy*, No. 9019/80, 23 February 1984.

³⁴ ECtHR, *Nowicka v. Poland*, no. 30218/96, 3 December 2002.

³⁵ ECtHR, *Aerts v. Belgium*, No 25357/94, 30 July 1998.

³⁶ ECtHR, *Shopov v. Bulgaria*, no. 11373/04, 2 September 2010.

³⁷ ECtHR, *Johnson v. the United Kingdom*, No 22520/93, 24 October 1997.

³⁸ ECtHR, *Gajcsi v. Hungary*, no. 34503/03, 3 October 2006.

³⁹ ECtHR, *Gorshkov v. Ukraine*, no. 67531/01, 8 November 2005.

⁴⁰ ECtHR, *M. v. Ukraine*, No. 2452/04, 19 April 2012.

⁴¹ ECtHR, *Rudenko v. Ukraine*, No. 50264/08, 17 April 2014.

⁴² ECtHR, *Akopyan v. Ukraine*, No. 12317/06, 5 June 2014.

⁴³ ECtHR, *Fedorov, Fedorova v Ukraine*, No. 39229/03, 26 July 2011.

5. The opinion of the individual was taken into account.⁴⁴

In Article 24 of the Recommendations there are specified the grounds for termination of detention activities and/or forced treatment: "Involuntary hospitalization or involuntary treatment should be stopped if the duration of such action does not satisfy any of the criteria for their eligibility. The doctor performing the treatment of the person should be responsible for assessing that at least one of the criteria no longer exists, unless the Court did not reserve the right to assess possible damage itself, others or for special authority."⁴⁵

We have to admit that the international legal practice a form of involuntary hospitalization has significantly evolved towards consideration of the interests of an individual with mental health problems. International organizations worked out criteria for performance of hospitalization in involuntary order. Moreover, gradually the international community insists on minimizing this form of treatment for medical services in the community. In light of this, we believe that Ukraine should include to strategic documents of health care reform, as well as to the relevant legislation the steps to ensure mental health care in the place of residence.

Freedom from torture or cruel, inhuman or degrading treatment or punishment. Respect for private life.

At the level of the UN Convention on the Rights of Persons with Disabilities, freedom from torture is considered in the context of compulsory treatment and the need for free and informed consent of the patient. In concluding comments to Article 12 of the CRPD the Committee on the Rights of Persons with Disabilities admits that the staff must find ways to maximize consult with the patient and the person acting on behalf of the patient (e.g., guardian) did not take the decision instead of him or her.⁴⁶

Noteworthy is the position of the UN Special Rapporteur on countering tortures concerning the fact that the use of drugs (such as neuroleptics) without consent of patients or as a form of punishment can be considered torture. Side effects of such measures have a serious impact on the person.⁴⁷

At the level of the European aspect of medical intervention is seen as through the prism of Article 3 of the "Freedom from torture, inhuman or other cruel or degrading human dignity treatment or punishment", and Article 8 "Respect for private life."⁴⁸

European Court of Human Rights establishes the principle of communication between Article 3 and forced treatment methods: "The Court considers that the dependent and helpless situation, in which usually are the patients who are forcibly held in a psychiatric hospital, needs special attention to verify that the requirements of the Convention are met. Although a decision on the use of certain treatments is taken with certain rules of medical science, by the medical workers, including, if necessary, by force, to preserve the physical and mental health of patients who are not able to completely make independent decisions and for whom doctors are responsible, such patients nevertheless remain under the protection of the Article 3, which does not allow any deviations. In this situation, decisions must be based on the generally accepted principles of medicine; on the basis of the general rule, a measure which is a therapeutic necessity can not be regarded as inhuman or degrading treatment. However, the court should make sure that the existence of a medical necessity was conclusively proven."⁴⁹

As for Article 8, the ECtHR comes from the fact that private life includes physical and psychological integrity of the person. Keeping the same mental stability is a precondition for the effective exercise of the right to respect for private life.⁵⁰ Invasion to private life must comply with the law and be based on a legitimate aim.⁵¹ Such intervention must be authorized by the court's decision.⁵²

⁴⁴ Recommendation Rec(2004)10 of the Committee of Ministers to member states concerning the protection of the human rights and dignity of persons with mental disorder.

// <https://wcd.coe.int/ViewDoc.jsp?id=775685>

⁴⁵ Ibid.

⁴⁶ General comments of the Committee on the Rights of Persons with Disabilities on Article 12 of the CRPD. // <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/GC.aspx>

⁴⁷ Involuntary placement and involuntary treatment of person with mental health problem. – European Union agency for fundamental rights. // <http://fra.europa.eu/en/publication/2012/involuntary-placement-and-involuntary-treatment-persons-mental-health-problems>

⁴⁸ Ibid.

⁴⁹ ECtHR, *Herczegfalvy v. Austria*, No. 10533/83, 24 September 1992.

⁵⁰ ECtHR, *Bensaid v. the United Kingdom*, no. 44599/98, 06 February 2001.

⁵¹ European Court of human rights. Press unit. – Factsheet – Mental Health. // http://www.echr.coe.int/Documents/FS_Mental_health_ENG.pdf

⁵² Ibid.

Compulsory treatment, as well as change to the stricter conditions of hospitalization is allowed in cases where the person is a danger to himself or others.⁵³ During his stay in the institution a person must have the guarantee of protection against sexual offenses, including on the side of the staff.⁵⁴

Illegal are considered inappropriate conditions of detention in an institution (food, temperature, activities or exercises).⁵⁵

A person may appeal against involuntary treatment, including after its termination.⁵⁶

There should be given the opportunity of confidential communication with the outside world.⁵⁷ In the context of legal procedures should be informed not only the person concerned, but his representatives too.⁵⁸

Important is the position of the European Committee for combating torture, as outlined in its standards. Estimating drug use only in the form of treatment, the Committee notes that the psychiatric treatment should be based on "individual approach", and it consists of not only drugs, but "should involve a wide range of rehabilitative and therapeutic activities, including access to occupational therapy, group therapy, individual psychotherapy, Art, theater, music and sports." The Committee notes that if personnel is trained not enough, if dominant is ward instead of restoring, the situation could reach that "the fundamental components of effective psychosocial, rehabilitation treatment will not be developed or even totally lost."⁵⁹

The logical conclusion from the above is considered to be our recommendation to regulate in the legal field of Ukraine the use of fixation and isolation stuff, and guarantee to persons residing in neuropsychiatric social care and are in psychiatric institutions, freedom from torture and other cruel inhuman or degrading treatment and dignity punishment.

The right to live independently and inclusion in the local community is logically declared in the UN Convention on the rights of persons with disabilities need to overcome the discrimination and respect for equality. The above described requirement to provide support to people with disabilities in the implementation of their own capacity, recognizing that the placement and stay of a person in an institution may be a risk to limit his right to liberty and also aspiring that the services, including for mental health care were provided at the place of residence, raises before Ukraine the question to enable people with disabilities to choose – where and with whom they should live. The latter requires that the people with disabilities obtain services at the local community level.

Item a) of Article 19 of the Convention on the Rights of Persons with Disabilities imposes on the States-parties obligations regarding the matter that "...Persons with disabilities have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement."

From the report of the UN High Commissioner for Human Rights appears that in many regions of the world there is the practice of placing people with disabilities to social care institutions: "Although conditions in the various cases in institutions may vary, yet they are characterized by certain elements: isolation and segregation of life; lack of control over decisions concerning daily life; clearly set schedule, independent of personal interests and preferences; implementation of identical measures in one institution to the group of persons under common control; paternalistic approach to the provision of services; supervision of living conditions, without the consent of the person interested, and disproportionate number of people with disabilities living in one institution."⁶¹ The report gives some understanding of living independently: "Accommodation conditions should be evaluated taking into account issues such as the choice with whom to live; who decides regarding referrals and discharge

⁵³ European Court of human rights. Press unit. – Factsheet – Mental Health. // http://www.echr.coe.int/Documents/FS_Mental_health_ENG.pdf

⁵⁴ ECtHR, X and Y v. the Netherlands, No. 8978/80, 26 March 1985.

⁵⁵ ECtHR, GC, Stanev v. Bulgaria, no. 36760/06, 17 January 2012.

⁵⁶ ECtHR, Herz v. Germany, No. 44672/98, 12 June 2003.

⁵⁷ ECtHR, Herczegfalvy v. Austria, No. 10533/83, 24 September 1992.

⁵⁸ ECtHR, Vaudelle v. France, no. 35683/97, 30 January 2001.

⁵⁹ Involuntary placement and involuntary treatment of person with mental health problem. – European Union agency for fundamental rights. // <http://fra.europa.eu/en/publication/2012/involuntary-placement-and-involuntary-treatment-persons-mental-health-problems>

⁶⁰ The UN Convention on the Rights of Persons with Disabilities. // <http://www.un.org/disabilities/convention/conventionfull.shtml>

⁶¹ Thematic study on the right of persons with disabilities to live independently and be included in the community. // http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session28/Documents/A_HRC_28_37_ENG.doc

of a person with disabilities from the orphanage; permission to visit his house; choice of daily routine and nutrition; shopping and payment costs.⁶²

Committee on the Rights of Persons with Disabilities requires the States- parties with the participation of organizations of persons with disabilities to embrace the strategies with time and resource limits aimed at deinstitutionalisation of the services. "Deinstitutionalisation is a process associated with the change in the living conditions of persons with disabilities, the transition from institutional and other segregated conditions to the system that provides social participation when local community services are provided on an individual choice and interests. Consistency of deinstitutionalisation means transformation of the system of services in areas such as health care, rehabilitation, support services, education and employment."⁶³

There are different types of deinstitutionalization models, so as modern special institutions can provide various services for individual planning and development of skills for living in society. Of course, creating conditions for deinstitutionalisation requires significant resources. The first stage requires support as for the existing institutional system, and creating a new system of services.

However, the latter is more cost-efficient, and, according to the research, turns to be cheaper than keeping people with disabilities in special institutions.

It is necessary to take into account the aspect of personal assistance for people with disabilities, and the main criterion should be respect for the dignity of persons with disabilities and provision them with an opportunity of maximum independence. Such assistance, for example, within the family should be encouraged through social assistance.

In the aforementioned report of the High Commissioner on the right to independent living provided are the following recommendations to the states regarding its implementation steps:

1. Legislative and administrative measures. It is necessary to review the civil law on equality for persons with disabilities before the law and realization of their capacity. It is also needed at regulatory level to declare the right of persons with disabilities to live independently and be involved in community life, at this should be abolished the provisions allowing forced institutionalization.

2. The level of planning and programs. Programs and policies of deinstitutionalisation should focus on the implementation of system changes concerning gradual increase in support and alternative services at community level and focus on real time. This implies a gradual reallocation of funds from special institutions in favor of support services at the community level, as well as suspension of creation of the new facilities and renovation of existing ones.

3. Resource level. For efficient funding of support services, it may be worthwhile to include them to national programs on disability issues. To prevent abuse, the state should observe if the needs and interests of a person were above the interests of the service provider.⁶⁴

Insists on deinstitutionalisation also the World Health Organization: "WHO calls for continuous transition from the use of psychiatric hospitals and residential institutions to ensuring long stay care in local communities. The organization believes that the care at the local community level positively influences results regarding quality of life, providing merely human rights, moreover – is a less costly approach versus institutionalization. WHO also emphasizes the connection between the housing sector and the employment sector."⁶⁵

Currently in Europe nearly 1.2 million people are living in social care institutions, the largest group is people with intellectual disabilities, the following are persons with intellectual disabilities and mental health problems.⁶⁶

In the ECtHR practice a special place is occupied by cases involving extended detention of a person in a psychiatric institution with the restriction of outside contacts, which the Court finds to be a violation of Article 5

⁶² Thematic study on the right of persons with disabilities to live independently and be included in the community. // http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session28/Documents/A_HRC_28_37_ENG.doc

⁶³ Ibid.

⁶⁴ Ibid.

⁶⁵ Common European Guidelines on the Transition from Institutional to Community-based care. //

<http://deinstitutionalisationguide.eu/wp-content/uploads/2012-12-07-Guidelines-11-123-2012-FINAL-WEB-VERSION.pdf>

⁶⁶ Ibid.

of the Convention.⁶⁷ Furthermore, the Court finds no violation of Article 3 of the Convention where the person lives long in unsanitary and unacceptable conditions.⁶⁸

The European Social Charter and a number of recommendations of the Committee of Ministers of the European Council note the gradual transition from the system of institutions to services on the local communities level. In particular, Article 15 of the European Social Charter declares the rights of persons with disabilities to independence, social integration and participation in the community life and requires the States-parties to develop appropriate programs.⁶⁹ The Resolution of the Parliamentary Assembly concerning the access to the rights for people with disabilities calls "to actively promote the transformation of institutions, reorganizing services and redesigning resources of specialized agencies into services at the place of residence."⁷⁰

We can also only support the urgency of developing an appropriate national policy that would include the rejection of the creation of new residential care facilities; concentration in the existing institutions of the capacity to prepare people for living in the community; gradual redistribution of allocations for the purposes of independent residence of a person in the community and receipt of the respective services.

⁶⁷ ECtHR, *Shtukaturov v. Russia*, No. 44009/05, 27 March 2008.

⁶⁸ ECtHR, GC, *Stanev v. Bulgaria*, no. 36760/06, 17 January 2012.

⁶⁹ European Social Charter (revised). // <http://conventions.coe.int/Treaty/en/Treaties/Html/163.htm>

⁷⁰ Resolution 1642 (2009). Access to rights for people with disabilities and their full and active participation in society // <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17697&lang=en>

Section II. The national legal standards for individual rights of people with mental health problems

The Law of Ukraine “On Psychiatric Help” declared that the priority provision of psychiatric care is to secure rights and freedoms of man and citizen.⁷¹ Psychiatric help is provided in accordance with the principles of legality, humanity, respect for human rights and citizen, volunteerism, availability and in accordance with the current level of scientific knowledge, necessary and sufficient measures of treatment with minimal social and legal restrictions.⁷² Article 25 of this Law defines the rights of persons, to which psychiatric help is being provided, including:

- respectful and human treatment, excluding the humiliation of honor and dignity;
- getting information on their rights related to the provision of mental health care;
- refusal of psychiatric care except for its provision compulsory prescribed by law;
- obtaining mental health care in the least restricted, according to their mental state, conditions, if possible — in the place of residence of those persons, their families, other relatives or legal representatives;
- detention in a psychiatric hospital can take place only during the period necessary for examination and treatment;
- prior consent or waiver at any time from the application of new methods of diagnosis and treatment and medicines, or from participation in the study;
- free legal assistance on issues related to the provision of mental health care to them;
- alternative, according to their own wish, psychiatric examination and involvement in the commission of psychiatrists for psychiatric help of any professional who is involved in the provision of mental health care, in agreement with him;
- personal participation in court hearings in matters related to the provision of mental health care and restraint of their rights in this regard;
- compensation for harm or damage to their property as a result of unlawful placement in a psychiatric institution or a psychiatric institution for social protection or special education or due to the lack of safe conditions for psychiatric care or disclosure of confidential information about mental health and psychiatric care.

Separately, the law regulated the rights of persons who are in a psychiatric institution, including:

- communication with others, including a lawyer or other legal representative without the presence of unauthorized persons in accordance with the internal regulations of psychiatric institutions; — communication with other persons of their choice to provide mental health care;
- ensuring the secrecy of correspondence when sending and receiving any correspondence;
- access to the media;
- entertainment, classes in creative activity;
- worship, observance of religious canons;
- appeal directly to the manager or head of department of a psychiatric institution for psychiatric care, discharge from a psychiatric institution and observance of the rights of this law.⁷³

Unfortunately, many of the regulated legal rights remain only on paper. The fact that in the legal field category of persons with mental health problems is one of the most vulnerable and imperfect legislation results in the violation of human rights in this area, which has been repeatedly confirmed by the European Court decisions, allows to question the guarantee of the declared principles.

Capacity and realization of legal capacity. Analysis of the legislation of Ukraine suggests the identity of the concept of capacity and legal capacity. Article 30 of the Civil Code of Ukraine provides the definition of civil capacity — the ability of an individual through his actions acquire civil rights for themselves and exercise them independently, and the ability through their actions to create for himself civic duties and perform them by

⁷¹ The Law of Ukraine “On Psychiatric Help”// <http://zakon4.rada.gov.ua/laws/show/1489-14>

⁷² Ibid.

⁷³ Ibid.

himself and bear responsibility the event of their failure. The first part of this article stresses that “civil capacity has a person who understands the significance of his actions and can control them.”⁷⁴

The legislation provides as for restrictions, so for loss of civil capacity by a natural person. The Civil Code regulates the restriction of civil capacity by a court on the grounds that “he (the person) is suffering from a mental disorder that substantially impacts his ability to realize the significance of his actions and (or) control them. Of the person whose civil capacity is limited, there is established care. A custodian authorizes a person to exercise powers that go beyond small. A refusal of the guardian to give such permission a person may appeal to the guardianship authority or court.”⁷⁵

The recognition of a person incapable occurs if “...if he is due to chronic, stable mental disorder is not able to realize the significance of his actions and (or) control them.” The legislator states that a person declared incompetent can not perform any transactions because in such cases the court determines over such a person public care and appoints him a trustee.⁷⁶ The legislator assigned to the latter performance of all transactions. Resuming of capacity (in case of recovery or significant improvement of health) is conducted by the court on the basis of an application of the guardian or guardianship authority.⁷⁷ The last restricts the access of people with mental health problems to justice. Moreover, a person declared incompetent can apply to the court for revocation of authorities of a guardian.

The only, but not particularly effective safeguard abuse of guardian legislator defined the guardianship authority that controls his actions. In particular, the trustee is restricted in the agreements concerning the property of the ward. In addition, the guardianship authority may remove a person from guardian functions when placing an incapacitated person in a special institution.⁷⁸ However, the functioning of the Institute is accompanied by certain problems – the lack of a separate unit that would be responsible for the direction of care of adult disabled persons and persons, whose capacity is limited due to weak institutional support for this sector.⁷⁹

It seems that, on the one hand, a guardian is responsible for the actions of the incapacitated person. The signed by the incapacitated person documents are considered invalid, and all agreements with the property are concluded by the guardian only with the consent of the guardianship authority, which is obliged to prevent violations of property rights of the incapacitated person. On the other hand, the recognition of human incapacity means that the signed by him documents have no legal force and officials should not react to them. This is a significant restriction of rights, because officials are not required to respond to a person’s complaints about sub-standard human health and social services; an application for a job, marriage; request for state aid, a lawsuit. A person declared incompetent by a court, gets into a situation where his fundamental rights are limited. By the decision of a guardian he be can put in an institution or forcibly hospitalized, which would infringe his right to liberty. To carry on his treatment, determine its forms and methods it is sufficient to obtain the consent of his representative. Incapacitated persons are deprived of electoral rights as well as the right to express an opinion.

According to the Ministry of Social Policy, in Ukraine there are declared incompetent 32,097 adult citizens, of which 24,392 have guardians of the number of individuals, over 7550 persons special care facilities are exercised, over 155 persons are engaged in the care custody and guardianship. Worrying is the fact, that the 7834 incapacitated persons do not have established disability. We can assume that either guardians are not aware of the rights of wards, or guardianship is just looking formal. The latter raises concerns on the situation of such big amount of people.

The Civil Procedure Code states that representative in court of the rights and legitimate interests of the person declared incapable is a guardian. Legislator in this context does not mention the possibility of the court to draw to the court an incapacitated person. Notable is also the fact that the application for recognition of a

⁷⁴ Civil Code of Ukraine. // <http://zakon1.rada.gov.ua/laws/show/435-15>

⁷⁵ Ibid.

⁷⁶ Civil Procedure Code. Art.. 241. Ch. 1

⁷⁷ Civil Code of Ukraine.

⁷⁸ Ibid.

⁷⁹ Problems of the custody system over incapable adult persons in Ukraine: Reports on research. – K.: PPU “Coalition” 2012. – Series: “Rights of persons with intellectual disabilities”. – 45 p.

physical person as incapable may be filed by his family, close relatives, regardless of their cohabitation, guardianship body, psychiatric institution. In the statement on the acknowledgment of physical person incapable shall contain circumstances that indicate chronic, persistent mental illness, so that the person is not able to realize the significance of his actions and (or) control them. On the basis of mental disorder of a person the court appoints a forensic psychiatric examination.⁸⁰

There are reason to state the lack of legal guarantees concerning the capacity limitations of a person's capacity or person's recognition as incapable. Thus, Article 240 CPC states: "1. Cases on restriction of civil capacity of physical person or acknowledgment of physical person's incapacity considered by the court with the presence of an applicant and a representative of the guardianship authority. Question about call of an individual, on which the case of recognizing incapable is reviewed, is decided in each case by the court based on the state of his health."⁸¹ So as participation of a person in court proceedings is essential, it is absolutely necessary to strengthen the access to justice for such an interested person.

From these positions the developed by the Ministry of Social Policy of Ukraine draft Law of Ukraine "Fundamentals of Ukraine's laws on the custody and care of adult disabled persons and persons whose capacity is limited, their social protection" looks positive.⁸² The adoption of this bill will significantly improve the legal status of persons who are recognized as incapable or partially capable, by empowering these peoples' opportunities to ask questions of reviewing the decision regarding capacity, deprivation of office of guardian, and qualify for free legal aid. Simultaneously, the bill recommends to introduce amendments to a number of laws.

1. *Codex of Civil Procedure*. According to the proposed wording of Article 237 of the CPC application for recognition of an individual incapable, restriction of civil capacity of an individual, the need for care, freedom from authority of a guardian or trustee, on renovation of capacity (not more than once every six months) may be filed, including that person. To prevent abuse of guardianship institution, the sponsors proposed to amend Article 238, anticipating the need to add to the application for recognition of an individual incapable, restriction of civil capacity of physical person and the renovation of civil capacity of a natural person, the conclusion of the respecting medical-advisory committee concerning the presence or absence of psychiatric or drug abuse of such individual and the need for care.

2. *There are changes to paragraph 1 of Article 207: "1. The court decides on the application to be left without consideration, if: a request is filed by a person who has no civil procedural capacity, except for applications for renewal of its civil capacity and a dismissal of guardian". Article 240 of the CPC in accordance with the draft law states that "proceedings for recognition of a physical person's incapacity, limiting of his capacity, review of decisions on the recognition of individual rights and responsibilities, and limitations of capacity of physical person are considered by the court upon mandatory participation of such a person (if possible according to his health)." Another proposed by the authors measure, which would have insured the abuses of the bill, is to amend Article 241 of the CPC of providing that the solution "... on the recognition of a physical person's incapacity, restriction of civil capacity of physical person for the term of 5 years and after the expiration of the said period is to be reviewed in the order of review of the cases on restriction of civil capacity of a physical person and recognition of a physical person as incapable."*

3. *The Law of Ukraine "On citizens' appeals"* about appeals filed by an incapacitated person. Such appeals, on the proposal of the authors of the bill should be considered if they relate to appeals against decisions, actions or inaction by a guardian, special institution of the sphere of social protection, healthcare and execution of criminal penalties, the guardianship authority.

4. *The Law of Ukraine "On Free Legal Aid."* It is proposed in particular that appeals regarding primary legal aid should be submitted including the persons recognized incapable or partially capable. It is proposed to add the right for free secondary legal assistance the persons to whom the relevant public authority will consider or is considering recognition of their actions or limit their civil capacity, against the decision on recognition such

⁸⁰ Civil Procedure Code. // <http://zakon3.rada.gov.ua/laws/show/1618-15/page2>

⁸¹ Ibid.

⁸² http://www.mlsp.gov.ua/labour/control/uk/publish/category?cat_id=167311

persons as incapable or restriction of their civil capacity and renewal of civil capacity of such people, release of their guardian or trustee and appeal decisions, acts or omissions of guardianship authority.

Article 18 is offered to be supplemented with the following: "Appeal to provide such services in order to restore civil capacity and dismissal of a guardian or trustee may be submitted personally by persons who are recognized incapable or capacity is limited".

Legislative initiatives of the government to strengthen the legal guarantees of persons recognized incapable or whose capacity is limited, can be considered a logical step for implementation international obligations. We can insist on their rapid submission to the Parliament.

Among the list of other government measures are relevant State Programme "National Action Plan to implement the UN Convention on the Rights of Disabled Persons till 2020." To implement Article 12 the Program defines: 1) introduction of amendments to the Law of Ukraine "On Free Legal Aid" to determine the procedure of providing the disabled with mental retardation with the information about the content and progress of the lawsuit in an accessible format, and personal assistance for their participation in court proceedings; 2) solving the question on the introduction of services of representing and defending the rights of disabled persons with mental retardation and mental disorders, including by means of an experiment.⁸³

These steps, in case of their implementation, will let saying about some improvement in the realization of the capacity of persons with intellectual and psychosocial disabilities. However, there should be immediately carried out an experiment on services representing the interests of persons with intellectual and psychosocial disabilities, so as long-term preservation of a substitutional model of decision making puts into question the declared by the government way to ensure human rights.

Based on the above said, we can conclude that the relationship between the national laws in an individual's capacity and his actual capacity leads to exclusion of those found incapable of decision-making processes that affect them, including at constitutional level. Total dependence on the guardian and the inability to deliver his opinion are the major trends of current legislation.

The human rights community is also concerned about the persistence in the legal field "replacing" model of decision-making. Therefore, in our opinion, there should be immediately conducted an experiment with representing the interests of people with mental health problems, as well as to introduce to the civil law provisions concerning supported decision by persons who are not able to realize the significance of their actions and control them.

The right to liberty. Present in national legislation concepts of detention as placement of a person without his or her consent to a special institution, pose serious challenges to guaranteeing the right to freedom under the Constitution of Ukraine as well as numerous international treaties to which the country joined. On the inadequacy of legislation in this area also emphasized the European Court of Human Rights.

Article 13 of the Law of Ukraine "On Psychiatric Care" provides: "A person is hospitalized in a psychiatric institution voluntarily – at his request or deliberate consent. (...) A person recognized in accordance with the law incompetent, is hospitalized in a psychiatric institution at the request or with the consent of her guardian. (...) Consent to hospitalization shall be recorded in the medical records for the signature of the person or a legal representative and a psychiatrist."⁸⁴ From the mentioned there is perceived vulnerability of the specified persons recognized as incapable of limiting their right to freedom.

The human rights community hopes that the Constitutional Court of Ukraine will support the submission of the Authorized person of the Parliament of Ukraine on Human Rights and recognize this part of Article 13 unconstitutional.

Article 14 of the same Act states the grounds on which a person may be forcibly hospitalized, namely: "A person who suffers from a mental disorder can be hospitalized in a psychiatric institution without his informed

⁸³ State program "National Action Plan to implement the UN Convention on the Rights of Disabled Persons till 2020." // <http://zakon1.rada.gov.ua/laws/show/245-2011-%D1%80>

⁸⁴ Law of Ukraine "On psychiatric help". // <http://zakon4.rada.gov.ua/laws/show/1489-14>

consent or without the consent of his legal representative if his examination or treatment are possible only in a hospital, and in establishing in a person severe mental disorder, in result of which he: commits or shows real intent to commit acts which constitute a direct danger to him or others, or can not meet his own basic necessities of life level, to ensure his vital functions.”⁸⁵ According to the subsequent text of the law, the commission takes the psychiatric doctors during a day to the court reasons, according to which a person should be kept in a psychiatric hospital by force. The person hospitalized in force is formally guaranteed the possibility of appeal.

As in the case of hospitalization of a person declared legally incapable, concern causes the Law of Ukraine “On Psychiatric Help” provision for placement of a person declared incompetent to neuropsychiatric orphanage: “The reason for the placement of a person suffering from mental disorder to a psychiatric institution for Social protection is (...) to the person recognized as prescribed by law incompetent, the statement of parents or other legal representative and decisions of a guardianship authority taken on the advice of a panel of psychiatrists.”⁸⁶ Surprising is that with so many people and institutions legislator did not want to hear the opinion of the person concerned. Moreover, to leave the institution, a person recognized incapable can only request a legal representative with the obligation to keep him. The legislator, however, does not exclude the possibility of the court decision on illegal placement of a person, but incapable person himself can not challenge that decision.

The outlined above problems are disappointing in respect of implementation of the declared in the legislation principle of voluntariness of receiving psychiatric help.

A major challenge for safeguarding the right to liberty is compulsory forensic psychiatric examination. In particular, the Code of Civil Procedure provides: “the Court with sufficient data on mental health disorder of an individual appoints for establishing his mental state to conduct a forensic psychiatric examination. If the person clearly avoids passing the forensic examination, the court involving a psychiatrist may decide on a compulsory referral to the forensic medical examination.”⁸⁷ It must be noted that the referral to the forensic psychiatric examination may be considered a violation of the right to liberty, as understood in international practice. It is insufficient to restrict the freedom of person identified only on the basis of his mental disorders.

Moreover, the examination may harm the health of a person. However, the European Court concerning Ukraine demonstrates the use of pre-trial proceedings and by the court authorities and pre-trial authorities of this instrument in a manner and amount that does not meet human rights.⁸⁸

With this in mind should be immediately amended the national legislation, which would give the opportunity to consider the opinion of a person declared incompetent in case of limiting this person’s freedom. Placement of a person to the special institution as well as his hospitalizations should be based on the ability to deliver his opinion. Sending person for forensic psychiatric examination, should be taken into account the complex criteria defined by international practice.

Freedom from torture. Interference in private life. Described in the first part of international standards insist on a possibly greater role of free and informed consent on the methods and forms of treatment.

The aspect of the free and informed consent is present as in the legislation regarding health care and so in the special law “On psychiatric help.”

Concerns creates the norm of Article 43 (Consent to medical intervention) of the Law of Ukraine “Fundamentals of the Law of Ukraine on Healthcare”, which in particular says: “consent of an informed patient is required for application of methods of diagnosis, prevention and treatment. As to (...) the patient recognized in the prescribed by law order to be incompetent, medical intervention is carried out with the consent of his legal representatives.”⁸⁹ It is essential, however, that the patient was maximal informed and in most convenient manner gave his consent to the treatment.

⁸⁵ Law of Ukraine “On psychiatric help”.
// <http://zakon4.rada.gov.ua/laws/show/1489-14>

⁸⁶ Ibid.

⁸⁷ Civil Procedure Code of Ukraine. // <http://zakon4.rada.gov.ua/laws/show/1618-15/page7>

⁸⁸ ECtHR, *Rudenko v. Ukraine*, No. 50264/08, 17 April 2014; *Zaichenko v. Ukraine* (no. 2), no. 45797/09, 26 February 2015

⁸⁹ Law of Ukraine “Fundamentals of the Law of Ukraine on Healthcare”. // <http://zakon4.rada.gov.ua/laws/show/2801-12/page2>

The same applies to the use of new treatments or medicines: "New methods of prevention, diagnosis, treatment, rehabilitation and drugs that are under the review according to the prescribed manner, but are not allowed to use, can be used in the interests of treatment of a person only after his written consent. As to the person recognized by law as incapable – the written consent of his legal representative. Upon receipt of consent to the use of new methods of prevention, diagnosis, treatment, rehabilitation and drugs that are under the review according to the prescribed manner, but not yet approved for use, and the person (or) his legal representative must be provided with information about the objectives, methods, side effects, risks and expected results."⁹⁰ These rules should be brought into line with Article 25 of the Convention on the Rights of persons with disabilities to provide services on the basis of free and informed consent. Individuals should be provided with information in a convenient way and made arrangements for maximum opportunity to hear their opinions about this.

The same restrictions are found in the Law of Ukraine "On Psychiatric Help". In particular, psychiatric care is provided at the request or with the informed consent of an individual. However, in the case of incapacity of the person such assistance is provided at the request or with the consent of his representative.⁹¹ It is therefore logical to amend the Law of Ukraine "On Psychiatric Help" taking into account an institute for free and informed consent of a person declared incompetent, unless that person is in an acute state. In this case, consent to treatment of such person shall be authorized by the court.

The human rights community is concerned about the unregulated use by psychiatric institutions of methods of fixation and isolation. The Law "On Psychiatric Help" defines "measures of physical limitations and (or) isolation of persons suffering from mental disorder during the provision of psychiatric care are applied by appointment and under the constant supervision of a psychiatrist or other health care worker, whom the owner of a psychiatric institution or authorized body has entrusted with the responsibilities of providing mental health care, and are applied only in those cases, forms and time when all other legal measures can not prevent the actions of individuals that represent imminent danger to himself or others. Concerning the forms and the application of physical limitations and (or) insulation there is made a record in the medical documentation. Measures of physical limitations and (or) insulation are used in accordance with the rules laid down by the central body of executive power that provides the formation of the state policy in the sphere of health care."

In the absence of a by-law the Ministry of Health, which provided the above approval rules for the use of physical restraints and (or) isolation, guided by the international standards, there should be expressed concern about the use of psychiatric hospitals and neuropsychiatric social care facilities for isolation of individuals, restraint shirts, fixation to the bed and other stuff. Moreover, we have to state that these methods are more common than the use of forms and methods that would have warned the escalation of the crisis in patient due to a lack of staff and its unpreparedness.

Interventions to privacy in respect of persons with mental health problems are also part of compliance with the reproductive rights. Disappointment creates the presence in Article 281 (Right to life) of the Civil Code of Ukraine of the norm "sterilization of an incapacitated individual in the presence of medical conditions can be made only with the consent of his guardian, in compliance with the requirements established by law."⁹² First, this norm clearly exceeds the authority of a guardian, secondly – creates a field for abuse. In this regard gives hope the developed by the Ministry of Social Policy bill regarding the guardianship over persons recognized incapable or capacity of which is restricted. The bill provides for amendments to the Civil Code of Ukraine, according to which sterilization of an adult capable person can be carried out only by a court order.⁹³

The challenge remains also the preservation of confidential information about persons having psychiatric help. The Law "On Psychiatric Help" guarantees the protection and preservation of information on the state of mental health of individuals and granting them psychiatric help. However, the law allows for exceptions when

⁹⁰ Law of Ukraine "Fundamentals of the Law of Ukraine on Healthcare". // <http://zakon4.rada.gov.ua/laws/show/2801-12/page2>

⁹¹ Law of Ukraine "On Psychiatric Help" // <http://zakon4.rada.gov.ua/laws/show/1489-14>

⁹² Civil Code of Ukraine.

// <http://zakon4.rada.gov.ua/laws/show/435-15>

⁹³ http://www.mlsp.gov.ua/labour/control/uk/publish/category?cat_id=167311

such information may be provided, in particular allowed is "... transmission of information on the mental health of individuals and the provision of mental health care without his consent or without the consent of a legal representative for: 2) pre-trial investigation or trial at the written request of the investigator, the prosecutor and the court."⁹⁴ It should be emphasized on the inconsistency of the cited above provision of Articles 161, 162, 164 of the Criminal Procedure Code. Because information includes medical confidentiality and is protected by law, it can be provided to an investigating officer only on the basis of the fact that the involvement of a person in the investigation is considered as such that may violate the protection of confidential information. It is proposed to consider providing such information to an investigator, a prosecutor only on the basis of presentation to the person suspect or prosecution of a crime or according to a court ruling.

In our view, revising the concept of capacity, Ukraine should take into account the need for participation of a person declared incompetent in decision-making concerning the forms and methods of treatment. It should also regulate the use of methods and forms of fixation and isolation, reducing their use of preventive crisis measures and its escalation. The provisions of the Law "On Psychiatric Help" in terms of the protection of confidential information should be brought into line with the current Criminal Procedure Code.

The right to independent living and inclusion in the local community. The National Action Plan on the implementation of the UN Convention on the Rights of Disabled for the implementation of Article 19 of the Convention there is planned development and submission in the established order to the Cabinet of Ministers of Ukraine of the draft resolution on ensuring organizational and legal conditions of protection of adult disabled persons and persons whose capacity is limited, providing a mechanism to help them according to the place residence.⁹⁵

National law confirms the right of an individual to choose his place of residence. Article 310 of the Civil Code of Ukraine says: "2. An individual has the right to free choice of a place of residence and his change, except for as prescribed by law."⁹⁶

Moreover, there is declared the possibility of receiving services in the place of residence. Article 25 of the Law of Ukraine "On the Rehabilitation of the Disabled in Ukraine" foresees in case of need provision of rehabilitation services according to the place of residence. However, the same article of the Law offers support and care for people with disabilities: "For provision of care for a disabled person, a disabled child with severe disabilities in the event of temporary absence of the people who care for him (during his illness, vacation, weekend), executive authorities, local self-government department create temporary stay of handicapped and disabled children in social care institutions, rehabilitation institutions and homes and also can create temporary stay of the disabled." However, use of this article is impossible for persons who are not officially registered with the local community, in which they are going to get the service.⁹⁷

By article 37 lawmakers noted that "persons with disabilities, disabled children with severe disabilities who, according to medical opinion, are in need of constant care, should be provided with social, educational and psychological patronage (daily help) at the residence (home). If necessary, the services of social and pedagogical patronage will be provided by rehabilitation outreach teams."⁹⁸ Unfortunately, the practical implementation of the stated rules is poor. According to experts, in the absence of alternative types of institutions in the community, people with disabilities are deprived of their place of residence and with people whom to live. People who live at home receive no services and public services depend entirely on the family. And both legislation and practice are aimed at isolation and segregation of that category in orphanages and disabled receive personal assistance only in exceptional cases.

⁹⁴ Law "On Psychiatric Help" //

<http://zakon4.rada.gov.ua/laws/show/1489-14>

⁹⁵ Resolution of the Cabinet of Ministers of Ukraine as of August 1, 2012 No.706 "On Approval of the State Grant Programme "National Action Plan on the realization of the Convention on the Rights of the Disabled Persons" for the period till 2020". //

<http://zakon2.rada.gov.ua/laws/show/706-2012-%D0%BF>

⁹⁶ Civil Code of Ukraine. // <http://zakon4.rada.gov.ua/laws/show/435-15/page6>

⁹⁷ Law of Ukraine "On the Rehabilitation of the Disabled in Ukraine" //

<http://zakon4.rada.gov.ua/laws/show/2961-15/page2>

⁹⁸ Ibid.

Regarding the provision of services in the place of residence to the persons with mental health problems should be declared only stated in the Law of Ukraine "On Psychiatric Help" provision of Article 25 on the right to receive mental health help, where possible, in the place of residence of a person, members of his family, other relatives or legal representatives. However, in this sense, the provisions of the Article applies mainly to psychiatric hospitals. In addition, individual users are entitled to sanatorium-resort treatment. But the situation with the implementation of this guarantee causes a feeling of regret, since there does not exist a specialized sanatorium for those users of psychiatric help. There are also no appropriate rehabilitation centers. Moreover, health-care-sanatorium institutions to support physical health for persons suffering from mental disorders are now closed.

The main result of this section may be our firm conviction that the state, together with organizations of the interested persons should work out strategic documents aimed at organizing supported accommodation and services at the community level. It is essential to regulate in detail the content of these documents and their resources.

Section III. Human Rights Adherence in Neuropsychiatric social care institutions (as a result of public examination of the Ministry of Social Policy and monitoring visits to Veselokutsky and Illinsky neuropsychiatric social care institutions)

According to the observations of experts, the vast majority of neuropsychiatric social care institutions are located far from regional centers. Thus, the average distance of neuropsychiatric social care from Kharkiv is 98.2 km, while the longest distance in Ukraine is in Poltava region - 152.1 km and the shortest - in Rivne (42.5 km). The average distance from regional centers to social care institutions in Ukraine is 83 km.

Evident is the fact that only 43 social care institutions (28%) are located in the cities, and the remaining 108 (72%) are in remote villages, towns and townships, which is a consequence of the Soviet system "care."

During the 2011-2014 were opened four new neuropsychiatric social care institutions – two in Luhansk, one - in Zhytomyr and Vinnytsia regions. In eight regions the number of wards has increased, in five regions - decreased. During the period from 2011 to 2013 the planned capacity of neuropsychiatric social care institutions increased by 1992 beds (actually there were deployed 1,932 additional beds, including placing 1849 persons).

But it is difficult to determine the more precise indices of increase of the persons under custody since the beginning of the antiterroristic operation, as data for 2014 do not include the performance of Crimea, Donetsk, Luhansk regions and of Sevastopol. Based on the information presented in the Donetsk and Lugansk regions, reduction applies only to the number of wards, while the number of institutions is left unchanged. Not specified what fate befell the 1566 wards from the Donetsk region in 1110 social care institutions of Luhansk region – exactly by that number of people decreased the rates of beds in these areas, but also there were no comparable increase in the number of wards in other neuropsychiatric institutions areas found. However, it's not for sure that wards remained in the occupied territories, as the number of institutions in the controlled areas has not diminished. So, special concern causes the fate of 2,676 people from Luhansk and Donetsk regions, which stopped receiving services in neuropsychiatric social care institutions. Total at end of 2014 the wards of 148 neuropsychiatric social care were 28,262 people.

Another telling factor that causes doubt the responsibility of the government towards the declared aims are the rules for planning buildings of neuropsychiatric social care institutions, according to which fences in neuropsychiatric social care institutions should be

no lower than 2 m. With gates that are closed (photo 1). The latter, unfortunately, clearly shows the dominance of control function over the support function.

According to the Model Regulations, neuropsychiatric social care is a stationary social and medical institution intended for permanent residence of citizens with mental health and neurological disorders who need outside care, household and health care. A neuropsychiatric social care is subject to the social protection of local administrations. However, the powers of the Ministry of Social Policy apply to ensure regulatory and methodological framework for social care. In addition, the Ministry conducts checks of the establishments.



Picture 1. Entrance to the Illinsk neuropsychiatric social care institutions.

⁹⁹ Mental social care: remoteness, which borders on oblivion.

// http://gazeta.dt.ua/SOCIETY/psihonevrologichni_internati_viddalenist_yaka_mezhue_iz_zabuttyam.html

The above mentioned authorities allow the Ministry of Social Policy influence over the institutions, particularly in terms of human rights adherence. First, through the foresight of regulatory provisions and other regulations documents of tasks to ensure the rights of persons living in social care institutions, and if necessary – regulations to support them. Secondly, through the mechanism of performance for appraisal training materials for administration and the staff of residential institutions - to encourage their systematic education on international human rights standards. Finally, thirdly, the Ministry can by means of control functions directly observe – whether the rights of wards are not violated.

However, in practice the situation is different. The regulations of the Ministry of Social Policy of Ukraine do not contain commitments on regulation of activities related to the implementation of international instruments on human rights, including the Convention on the Rights of the Persons with Disabilities. The same applies to the provisions of the structural units of social protection of population. As a result, human rights are not determinative for the activity of neuropsychiatric and social care institutions, because of what the features of social care institutions are focused on providing physiological needs of wards. Exactly this is evidenced by the current typical position - respect for human dignity, equal rights and opportunities of a person have not been declared the main value in the organization of the activity of an institution, there are not provided measures to prevent discrimination.

The elaborated project of the new model regulation can be considered a step forward regarding the part of adhering human rights, as evidenced by the entrusted on the administration of the institution task of "ensuring the realization of the rights of a ward under the law, including Article 25 of the Law of Ukraine "On Psychiatric Help". However, its too long approval causes disappointment.

Categories of persons who may be admitted to a psychiatric social care institutions. Under the current provisions of a typical neuropsychiatric social care institution, to an institution can be accepted for a state maintenance "... mentally ill persons who have reached retirement age and the disabled persons of the first and second groups of neuropsychiatric diseases, over 18 years ...".¹⁰⁰

Along with this, outside the services of neuropsychiatric social care are two vulnerable groups of persons with mental health problems. The first group is the persons who were classified to the third group of disability on the results of psychosocial disorders. In the absence of relatives an actual loss of family social ties, such persons need services in the institution. However, to these people can be attributed wards of social care institutions, to which according to the results of re-examination can be installed third group of disability. Deprivation services in neuropsychiatric social care institutions of this category of persons looks undesirable.

Another category, to which should be extended the maintenance services in neuropsychiatric social care institutions, are persons of pre-retirement age with mental illnesses, including chronic, which have lost contact with the outside world, have lost relatives and property. For this category of persons is actually unavailable the system services, which is provided to the homeless. At the same time, the state support can be presented in the possibility of maintenance of such persons in a neuropsychiatric social care institution.

Privacy adherence. A major challenge for the system of neuropsychiatric social care institutions is the maintenance of the privacy of the wards. This is the space in the rooms, use of toilets and bathrooms, an opportunity to use means of communication and privacy of correspondence. In the current Typical Regulation on neuropsychiatric social care there are no rules that would have declared privacy of the wards institutions. However, one of the directions of the State program "National Action Plan on Implementation of the Convention on the Rights of Disabled Persons" for the period till 2020" at the Ministry of Social Policy and the Ministry of Health is tasked with "studying the issue of strengthening the right for privacy in institutions and establishments where people with mental retardation and mental disorders are living day-and-night (social care institutions, psychiatric hospitals, day hospitals, dispensaries).¹⁰¹

¹⁰⁰ Typical Regulation on a neuropsychiatric social care / Approv. By the Order of the Ministry of Labour and Social Policy of Ukraine of 29.12.01 p. No.549

¹⁰¹ Decree of the Cabinet of Ministers of Ukraine of 0 1.08.2012 No. 706 "On Approval of the State program "National Action Plan on Implementation of the Convention on the Rights of Disabled Persons" for the period till 2020"// <http://zakon2.rada.gov.ua/laws/show/706-2012-%D0%BF>



Photo 2 Bedroom in Veselokutsk neuropsychiatric social care institution.



Photo 3. One of the bedrooms in Illinsky neuropsychiatric social care institution.



Photo 4. Toilet in Illinsk neuropsychiatric social care institution.

The concern creates the lack of respect for privacy in the social care institutions we visited. So, the building of Veselokutsk institution, which was previously a school, does not suit for these functions. In the rooms live from 8 to 10 people (photo 2). On the first and second floor

There are adjacent rooms. Such quantity of persons in one room creates a comfortable environment and conditions of privacy. In Illinsky social care institution in one of the dormitories in the room there is no furniture, where the wards could put personal things (photo 3).

Also, we can not talk about privacy during the hygiene procedures due to the lack of partitions in the toilets and bathrooms. Thus, in the Illinsky social care institution toilet may use 4-5 persons at the same time, there is no privacy (photo 4). In Veselokutsk social care institution bathroom can be simultaneously used by up to 10 persons, which without walls is a clear indication of privacy restrictions (photo 5).

Illinsk social care institution wards reported that the opportunity to wash is given once a week. These wards said: "We have to ask to open a washbasin for the hygiene procedures." These reports indicate people's rights violation. Moreover, dependence on the staff in making personal things, including hygiene, is extremely alarming.

Therefore, in our opinion, the draft Typical Regulation on an neuropsychiatric social care school should be supplemented by the following rule: "The wards are provided with living area with all the communal facilities, guaranteeing respect for privacy."

Decent standard of living. From the standpoint of government, philosophy of neuropsychiatric social care institutions is to provide social protection. In particular, the wards are provided with 4 meal nutrition, including dietary, considering the age and health state of persons living in the social care, within the natural nutritional standards (intervals between meals should not be more than four hours, the last meal should be organized two hours before bedtime). In the new draft Typical Regulation, this rule is preserved, the only exception is the lack of regulation "4 meals nutrition."

After visiting Illinsky social care institution and taking into account the results of previous visits to psychoneurological institutions of Dnipropetrovsk region, we are having reasoned doubts concerning the sufficient food supply to the wards of the social care institution (photo 6, 7). The institution orders semi-finished products as a food service that is allowed by the Order of the Ministry of Social Policy, which defines the areas of spending of 75% of the pension (social assistance) of the wards of the social care institutions.¹⁰² The price, which should include only food, were included the costs associated with the lease, cooking and other services, which caused rise in the price of the cooked dishes and as a result - reduce of their norms. To correct this situation necessary are the quickliest amendments to the above mentioned order.

Normative documents of the neuropsychiatric social care institution claim that wards are provided with "clothing, footwear, bedding, personal hygiene, soft and hard inventory and tableware." However, the typical provision stipulates that "persons who are accepted for social care ... dress in the clothes of the social care institution." The quoted suggests that wearing their clothes in the institution is not desirable. As a result, it can lead to restriction of individual privacy and oppression. There is hope that the new regulatory provisions do not oblige the wards to wear social care institution clothes.

The wards of of the visited social care institutions are allowed to use phones. Moreover, as the staff interview showed, the wards can use the Internet. They can also be visited by relatives; however, the problem is the lack in the Veselokutsky social care institution of rooms for communication with family and for the wards to have privacy.

In institutions there are created conditions for rest and interaction with themselves, particularly there are special equipped rooms. As the staff and the residents of the institution say, that was possible to combine the interests of different age groups.



Photo 5. Room for the hygiene procedures in Veselokutsk mental social care school.



Photo 6. Dining in Illinsk neuropsychiatric social care institution.

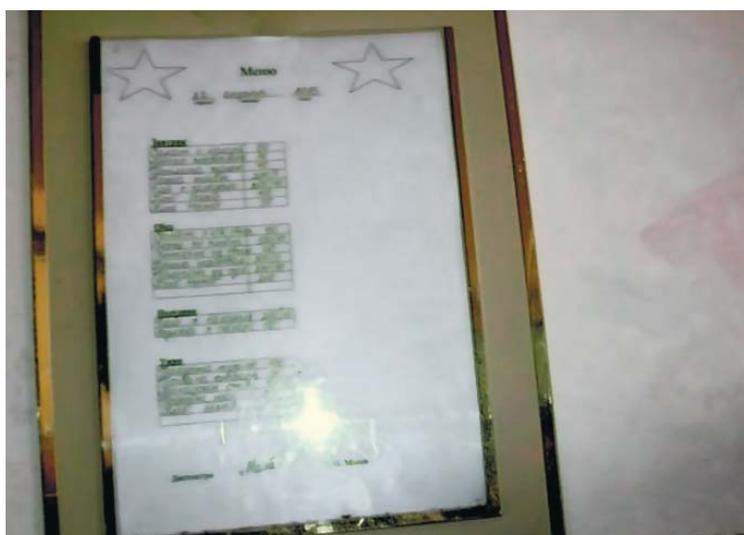


Photo 7. Menu in Illinsk neuropsychiatric social care.

¹⁰² <http://zakon2.rada.gov.ua/laws/show/z0516-12>

Differ also relations between different wards of the social care institutions. In the Illinsky institution lives both men and women. The staff of the institution claims that they do not interfere with the sexual life of the wards of the institution. Moreover, since the rooms allow, some are living as couples.

Another situation is in Veselokutsky social care institution. The institution is designed exclusively for men. The latter defines the conditions for sexual life. The staff of the institution notes that it conducts explanatory work with the wards about same-sex relationships. However, the staff does not prohibit the wards to communicate with women outside the institution.

The right to the highest attainable standard of physical and mental health. Receiving rehabilitation services.

According to the Typical Regulation of a neuropsychiatric social care institution, this institution provides health care for wards, including the emergency one. However, in this document, unfortunately, almost no place is given to providing rehabilitation services, which leads to the lack of social workers and rehabilitators in institutions. Today, virtually among all experts there is a clear understanding that without rehabilitation resource a social care house can not be of use for anyone there except for being a place for living. Moreover, the lack of adequate rehabilitation measures may result in termination of the skills and orientations. The latter eventually may lead to total dependence of the wards on the staff and the inability for them to make decisions.

In addition, worries initiate also the lack of interaction between the Ministry of Social Policy and the Ministry of Health towards the provision of medical services within the institution. Many institutions have vacant posts for doctors. The trend is the lack of middle medical staff. This may be a challenge for the residents of the social care institution, which in case of worsening of illness or deteriorating of health conditions will be not given medical assistance. In the situation with remoteness of the institutions from the cities, a lot of time will be wasted for waiting for the ambulance.

One of the most pressing problems is the staff is unknowledge on the rights of the wards. Based on the materials, submitted by the Ministry of Social Policy there can not be traced any educational work to ensure the rights of residents and institutions. Many of the problems identified just arise from the personnel's ignorance about the international standards in the field of rights of persons with mental health problems.

The problems we have found while visiting institutions, confirm the relevance of the defined problem. Thus, in Veselokutsky institution is missing a doctor, in the dispensary works only a nurse. According to the respondents, they got access only to the psychiatrist. The only therapeutic intervention, according to the respondents, is occupational therapy.

Even worse is the situation of residents receiving rehabilitation treatment in the institution. Individual rehabilitation programs are filled out with irregularities. They do not have a form of rehabilitation and activities. The residential institution does not have an office social worker, a worker on rehabilitation.

A depth interview shows the ensuring of reproductive rights. In particular, the employees of the institution note that they conduct talks with the wards concerning the harm caused by homosexual relations, because "this is violence." In addition, the staff strictly relates to relations of the wards with women outside the social care institution: "girls do not know how to behave with them, wards are sick, so we should not allow the birth of a sick child."

In Illinsk social care there is available medical staff - five doctors (an infectious diseases doctor, a psychiatrist, a therapist, a gynecologist-obstetrician, a dentist), middle and junior staff. However, respondents concerning the therapeutic measures indicate only availability of occupational therapy. The latter can touch up on the assumption that the institution does not have preventive treatment. Physicians respond only at the stage of identifying problems. Moreover, the interview with the wards from the institution showed that some psychotropic medications can be used as a form of punishment.

Not better is the situation in the Illinsky institution with the provision of rehabilitation services. Individual rehabilitation program is filled out with irregularities. There are no recommendations on the types and forms of rehabilitation. According to the staff, MSEC does not recommend the types of rehabilitation, for which resources are missing. The institution does not have positions of social workers and rehabilitators.

It's turned out to be a difficult situation with persons that have been displaced from the territory of the antiterrorist operation to Illinsky neuropsychiatric social care institution. Medical records on them were not trans-

ferred, available are only epics on medical diseases. Out of the 10 displaced persons two had severe form of tuberculosis. While observation one person died, another was in hospital. The fact that some displaced persons do not speak, points to the insufficient rehabilitative and therapeutic work.

For the reproductive rights, the staff notes that there is no objection to the relations between the wards. An obstetrician conducts educational work with the wards, and offers women, if necessary, contraception.

There is hope that the situation will improve with the adoption of the new provisions of the Typical Regulation, one of the areas of which envisages provision of rehabilitation services. However, it is necessary to prepare joint regulations of the Ministry of Social Policy and the Ministry of Health to provide in social care institutions medical care for wards.

The implementation of legal capacity. The previous section was about ignoring the views of the person declared incompetent or capacity of which is limited, during placement or expulsion from a social care institution. This situation is the evidence of total dependence of the residents of the institution. The procedure for the transfer to other residential institutions is too complicated. In addition to the statement of a ward, it is necessary to show a physician decision of social protection. Moreover, typical provisions do not regulate mechanism of spending 25% of the ward's money. The foregoing suggests interruptions on the interaction of staff and wards, especially seriously ill during communication on the disposal of their own financial resources.

The draft Typical Regulation provides a more progressive situation. Among the objectives of a neuropsychiatric social care institution it is stated, in particular, the representation of the wards' interests. Among other, the wards will be guaranteed protection of rights and representation of their interests. It is characteristic that in the draft typical regulation a ward's application (of a guardian or a trustee) initiates transfer to another social care institution. However, for the disposal out of a social care institution the person who is competent should prove that person has a place to stay in and that he can get a doctor's reference about the possibility to meet his basic living needs. Positively looks the declaration of the necessity of the record of the spent 25% of those wards' money, who are incapable or partially capable.

Another means of involving wards in decision-making that affect them, are the envisaged project activities with the participation of the Public Council with the wards' participation that will exert influence on the policy of the institution, including the creation of conditions for respect for human dignity and participation in decision-making. We can only hope that the relatives of the wards and the NGOs involved in the creation of the council, will infuse the institution with real authority, not a "facade" manifestation of the declaration by the staff involvement in decision-making.

The Ministry of Social Policy reported that the results of the check committed by the structural units in the sphere of social protection of local administrations concerning the adherence of human rights of the wards, custody and care of whom is made by the institution, do not contain violations.

The latter, unfortunately, is doubtful, so as even the analysis of the documents of the visited social care institutions suggests otherwise. Thus, in case of the court decisions on recognizing a person incapable, state custody is not provided for this person. In other cases, custody was entrusted to the director of the social care institution, resulting in a conflict of interest, which in turn may lead to violation of the rights of a ward.

Number of the wards whom deprived legal capacity in Illinsky neuropsychiatric social care is 46 persons (total number of wards - 280), of which 8 people - under the care of the institution. For 38 wards guardians are individuals. The situation of people with mental health problems is witnessed by a survey of the staff of the institution: "Wards are coming with no property or funds, guardians partly help them financially, there are two guardians who do not appear at all, and there are such guardians who come every week. The problem is the inability of capable wards, physical health of which is difficult (they are almost not moving), to manage their financial resources, in particular, receive and spend 25% of the state help for disabled."

In Veselokutsky institution there are 41 wards declared incapable (31.5%), 18 of them have got the guardians of individuals (among resettled from Popasna - 3 persons). The staff of the institution claims that the abuse by caregivers is virtually absent. If a ward gives money to a guardian, then he, in turn, brings ward clothes, personal items, food. Procedure introduced spending 25% of state disability of the 23 persons with disability, which are under the custody of the institution, set up a target commission of six people, including a

member of Novo Yehorivska Village Council, in whose territory the social care institutions is situated. According to the records of the special register of requests and wishes, the wards with staff accompanying them determine things for the purchase and make the purchases.

Themselves the wards of the both visited institutions expressed rather skeptically regarding their participation in decisions that affect them. According to them, they are not able to choose their doctor, food, a meal, but can choose only a time for personal hygiene, morning rise and evening sleep. However, if in Veselokutsk institution there was observed secrecy of correspondence, in Illinsk letters are read by staff. However, in Veselokutsk social care institution it is impossible to communicate with the relatives without witnesses.

Also different is the situation associated with the wards' opportunity to get acquainted with the materials of their personal file (medical materials). If in Veselokutsk social care institution it is allowed, the Illinsky institution residents do not have such opportunity.

Freedom from torture, cruel, inhuman or degrading treatment or punishment. Currently, the lack of cooperation with the Ministry of Health questioned the efficient use of personnel social care institutions of therapeutics, medicines, and particularly measures to isolate and (or) physical limitations of wards in a state of deterioration. These facts have been repeatedly pointed out by the Parliament Commissioner for Human Rights of an NGO. During the visit to the social care institution in Illinsk there was found a room where a separate group of isolated wards was kept. In addition, according to the wards, the institution uses such measure as tying to the bed.

However, the wards differently estimate the staff's attitude to them. Thus, if a part of the residents of the Veselokutsk institution draw attention to the arrogant attitude to them from the side of the staff, other residents do not admit this. In the Illinsky social care institution, according to the wards, the staff behaves with restraint.

A strange way is protection in the Illinsky neuropsychiatric social care institution of a ward, who was subjected to desecration by other wards. "When there is a fight between the wards, the staff stops it. The initiator is given an injection, and he sleeps for two days. If someone was insulted by a ward, he (the ward) also is given an injection, after which he sleeps for two days." Submitted excerpts from the survey can make arbitrary assumptions about the freely use of psychotropic drugs.

The monitors have perceived as negative the practice in the Illinsky social care institution of limiting the opportunities for wards to move freely on the territory. For patients of "acute compartment" there is a courtyard, which is surrounded by 4 meters tall fence. It must be emphasized that this situation does not help to restore or mitigate health, but is close to torture (Photo 8). Unfortunately, the response of the specialists of the Ministry of Social Policy to the wards appeals from the institutions remains poor. According to the information provided in 2014, the Ministry of Social Policy 23 appeals. The greatest number of complaints concerned:

- abuse by the administration of the institutions (16 appeals);
- improper conditions of social care of the wards, in particular, concerning the appropriate quantity of food (5 appeals);
- inadequate level of health care (5 appeals);
- a request to transfer to another institution (2 appeals).

It is noteworthy that for the last 2 appeals that came from the Dnipropetrovsk region, the Ministry did not register any violations and refused to transfer to another institution for the lack of seats.

Among the residents surveyed in the Illinsky social care school there was nobody who complained about the staff action outside the establishment. The highest authority where the wards



Photo 8. Walking courtyard to wards of acute compartment in Illinsk neuropsychiatric social care institution.

were addressing – the director of the institution: "If we complain on a nurse, she gets a reprimand." The wards from the Veselokutsky social care institution also do not complain about the staff actions to institutions outside the institution: "The director will make strict remarks to those who offend us." In general, the wards that visited

both institutions reported that they know nothing about their rights: "No one has ever told us about them."

Given the facts, the Ministry of Social Policy should promptly provide personnel training on the international standards on human rights. In addition, with the participation of non-governmental organizations it is necessary to develop and implement programs to educate the wards of social care institutions on their rights.

The right to an independent lifestyle. Services at the community level. With regret we have to say that in the regulatory documents that manage the activities of neuropsychiatric social care institutions receiving by the wards of services at the community level is not regulated. The only thing that encourages to the positive – the norm laid in the draft Typical Regulation, according to which a ward may be outside the institution with relatives for up to six months.

However, there are problems with the feasibility of the implementation of this law. Thus, the wards of the Veselokutsky neuropsychiatric social care are generally forbidden to go beyond the institution unsupervised. According to the director, this "recommendation" was given to them by the prosecutor's office. However, the staff reports about the organization of cultural activities on the community level.

Is not prohibited for wards to go outside the social care institution in Illinsk. According to residents, the staff does not prevent them from doing that.

The problem is also the staff's ignorance about the practices of supported accommodation. They are quite skeptical about the possibility of its implementation in Ukraine.

The fundamental obstacle to the right to receive services at the community level is the lack of institutions' appropriate work with the wards. Detention in contrast to the recovery is the main characteristic of the activity of the institutions. The allegation is confirmed by the thought of the part of the wards:

Interviewer: - Do you know why are you there?

Respondents: - Yes. Because we are sick.

Interviewer: - How much time do you have to spend in the institution?

Respondents (part of them): - All our life.

Realization of the right to employment or forced labor? Our concern arose due to the lack of regulation of the wards' labor and fair remuneration for it in the visited establishments. As in the Veselokutsky social care institution so in the Illinsky institution wards work for the institution. According to them, they are not forced to work, however, the institution does not offer a fair remuneration for it. The staff in institutions in return, said that work goes to the benefit of the wards and is conducted within occupational therapy. The lack of recommendations for vocational rehabilitation programs in individual programs of the wards and in the wards' medical personal cards causes doubt about the proper legal basis of the labor of the wards for the benefit of the social care institution.

Differently was commented on the employment situation of displaced persons in Popasna neuropsychiatric social care institution. "In our institution we were working outside." When asked whether they received a fair remuneration for it, the respondents answered: "Yes. Our 25%."

Monitoring visits committed to the institution by the Ministry of Social Policy. The list of



Photo 9. The exercise yards in the Veselokutsky mental social care institution

problems identified by the monitors shows that most monitoring visits were focused on food and material support of the wards, the state of the buildings, equipment, so as such comments are indicated by the results of the most visits. Therefore, the focus was on the wards' right to an adequate standard of living and social protection. This approach to the tasks of the monitoring visits fully complies with the applicable provisions of the Popasna social care institutions, where the functions and tasks of these social care institutions are aimed at ensuring physiological needs and medical care for the wards.

Systematically the personnel problems were found: unfilled vacancies of junior medical personnel. A few remarks concern the lack of physicians upon the availability of the appropriate vacancy created obstacles in ensuring the right of the wards to health. According to the results of two visits there was revealed improper performance of personnel, including management, of its duties. According to the results were taken tough measures - initiated a procedure for dismissal of directors and imposed administrative sanctions.

Some comments concerning the existence and implementation of individual rehabilitation programs (the results of 9 visits out of 32): cases of absence of IDP – Individual Development Program, their inappropriate design or lack of material and technical conditions for their execution.

Some of remarks concern the availability of the architectural space – there are no ramps at entrances and handrails in bathrooms or showers.

One concerned the recommendation of the Public Council of Popasna social care institution - disfunction of mechanism of taking into account the views of people with disabilities in the course of making decisions that affect them.

One note concerned the lack of partitions in bathrooms and toilets, that is, the violation of privacy. The need of the right to privacy has prompted monitors to express recommendations regarding the acquisition of certain types of cabinets, shelves and other places for storage of personal belongings of the wards and the order of storing them.

One of the comments concerned the need of making rules concerning the obligations of staff on how to proceed in case of emergency.

Notice regarding the absence of the assembly hall is directly related to exercising the right to participate in cultural life, recreation, leisure and sports.

Among other things, the monitors had detected problems with securing the services of the Popasna social care institution, which are not guaranteed by the current legal framework - for example, one of the comments concerned the conditions for granting employment treatment (current regulatory framework governing the provision of occupational therapy only if there is relevant recommendation of an individual program of rehabilitation). In another remark the recommendation concerning occupational therapy (although typical state rehabilitation program provides for the possibility of providing vocational rehabilitation (employment in the open labor market, which is not possible for the wards of the Popasna social care institution) and to describe the daily employment in workshops or subsistence farmers social care regulation uses the term "work therapy".

Of particular note is the conclusion after the visit to Chervonooskilsky social care institution, violations were not found, it is recommended to spread a positive experience. This positive approach of the monitors suggests feasibility of supervisions on request of administrations or social care institutions labor groups, which could be either general and apply to the activity of the institution in comparison with the accepted typical provisions or approved by the state standards for social services, provision of which is part of the tasks of social care institutions.

From the point of view of human rights of wards, positive characteristic of all monitoring visits was the fact that the focus of the monitors was not only logistical support of the institutions, but also the state of adherence of individual human rights. However, the object of the monitoring in this case went beyond the scope of neuropsychiatric social care regulated by the typical provision, as well as by the typical states. For example, the staff lacks experts for implementation of individual rehabilitation programs: social worker (rehabilitation services "learning basic social skills"), teacher (for sports and sports rehabilitation), physical rehabilitation (for physical rehabilitation), psychologist (for psychological rehabilitation). The above mentioned situation is not only the breach of the rights of rehabilitation wards, but also the rights of workers, as their requirements exceed the prescribed by the working position functions.

To summarize the above said, we have to conclude that the system of neuropsychiatric social care institutions in the form in which it now exists, is a serious threat to the fundamental rights of its clients. The issue is not only the lack of money or lack of specialists. Treating people living in social care institutions only as "sick people" causes in the latter a feeling of doomness.

Conducted public examination of the Ministry of Social Policy of Ukraine and visiting the two neuropsychiatric social care institutions allows to state:

- Priority of human rights is not determinative in neuropsychiatric social care institutions activity and in the regulation of such activity by the Ministry of Social Policy. Several years during the drafting of the Typical Regulation of a neuropsychiatric social care institutions induces to assume that the problem of human rights has not acquired sufficient urgency in the ministry.

- Unstated are the declared intentions to meet international commitments under the UN Convention on the Rights of Persons with Disabilities to facilitate potential neuropsychiatric wards in the choice of a social care institution along with other people of their place of residence and where and with whom they will live, so they do not have to live in some designated housing conditions in isolation and segregation. Not elaborated and presented in accordance with the established procedure to the Cabinet of Ministers of Ukraine in 2012 the draft decree on ensuring organizational and legal conditions of protection of adult persons with disability and persons, whose capacity is limited, providing a mechanism to help them at the place of residence and the list of social services provided to individuals, incapable of self-service, in accordance with paragraphs 1 and 3 of the Section VIII of the State Target Program "National Action Plan on Implementation of the Convention on the Rights of Persons with Disabilities" for the period until 2020, which could provide an alternative to the politics of institutionalization of persons with disabilities who require a significant amount of outside care.

- Current Model Regulation on neuropsychiatric social care institutions (as well as the new draft Regulation) provides for the systematic violation of the right to choose their residence and inclusion in the community, as in the case of need for inpatient care of a person with disabilities will inevitably be segregated, which is provided for by the procedure developed by the Ministry of Social Policy.

- The Ministry of Social Policy and neuropsychiatric social care institution staff are not obliged to provide information to wards concerning the ability to implement human rights. Moreover, the staff of the institutions is not required to undergo training on the standards of human rights.

- The lack of medical personnel directly creates significant challenges of the right to meet the highest level of physical and mental health.

- Formal unregulation and the virtual absence of staff responsible for rehabilitation direction causes even greater degradation of a ward's personality, non-availability of rehabilitation programs crosses out his potential to return to the community.

- Unregulated use of isolation measures and (or) physical limitation of wards, the use of psychotropic drugs as punishment, labor of wards without fair compensation remain outside the system of evaluation and appropriate action by the authorities.

Recommendations

1. To immediately start the "experiment with the introduction of services of representing and defending the rights of disabled persons with mental retardation and mental disorders under the "National Action Plan to implement the UN Convention on the Rights of Disabled for the period till 2020".

2. Urgently adopt and submit to the Parliament of Ukraine the draft law of Ukraine on reforming the guardianship over adult declared incapacity or persons whose capacity is limited.

3. To develop and adopt the Strategy of Implementation of Supported Decision-making Mechanism for people with mental health problems, which, in particular, but not exclusively, includes: development of a standard for providing information to a person with mental health problems; based on experiments to introduce the service of representing the interests of persons with intellectual and psychosocial disabilities.

4. Amend the civil law of Ukraine on the mechanism of supported decisions by persons who do not realize the significance of their actions and the ability to manage them.

5. To amend the Civil and family law concerning the possibility of marriage of a person declared incompetent upon the consent of the guardian.

6. In order to ensure access to justice by the users of mental health care, to use videoconferencing and equip the rooms with on-site hearings in psychiatric/ neuropsychiatric hospitals in cases of detention, modification or cancellation of the application of compulsory medical measures.

7. To ensure specialization (or sequence) of permanent judges who would have considered the issues of hospitalization, psychiatric care and would be responsible for implementation of the judicial review regarding the rights of persons hospitalized in a psychiatric hospital involuntarily.

8. To amend the Law of Ukraine "On Psychiatric Help" with the prior agreement of the criteria of detention of a person with the international human rights standards.

9. To introduce addition to the strategic documents of health care reform, providing for a gradual transition of the sphere of mental health care to the level of residence and obtaining such services in general hospitals, rehabilitation and social institutions. For this purpose to amend the Basic Laws of Ukraine in the field of health, psychiatric help. By the measures of the strategy to secure: by the state provision of the medications to take into account individual needs of psychiatric care; forms of therapeutic intervention should be aimed at individual recovery plans and include combined measures.

10. To urgently develop and submit to the established procedure to the Cabinet of Ministers of Ukraine a draft resolution on ensuring organizational and legal conditions of protection of adult persons with disability and persons capacity of whom is limited, providing a mechanism to help them at the place of residence and a list of social services provided to persons incapable of self in according to the "National Action Plan to implement the UN Convention on the Rights of disabled for the period to 2020".

11. To develop and adopt a strategy on independent living and receiving services at the community level by persons with intellectual and psychosocial disabilities, which, inter alia, include: refusal to open new neuropsychiatric social care institutions; conversion of existing neuropsychiatric social care institutions into institutions, main purpose of which is the rehabilitation of persons with psychosocial and intellectual disabilities and preparation of such persons for independent living; within a reasonable time to ensure assisting and other support for independent living for persons with psychosocial and intellectual disabilities; provide reasonable accommodation for receiving services at the community level.

12. To amend the Law of Ukraine "On Free Legal Assistance" to determine the procedure of information of the disabled with mental retardation about the content and progress of the lawsuit in an accessible format, and personal assistance for their participation in court proceedings, provided by the "National Action Plan to implement Convention on the Rights of Disabled for the period to 2020".

13. To amend the civil legislation of Ukraine, which restrict the procedure of compulsory referral to the forensic psychiatric examination by means of a consultative review of an independent psychiatrist.

14. To amend the Civil Proces Code of Ukraine concerning court decision on detention and providing psychiatric care to a person.

15. To amend the Law of Ukraine "Fundamentals of Ukraine Legislative Basis on Health Care", "On Psychiatric Help" adding position as follows: "The consent of an informed patient is necessary for the application of methods of diagnosis, prevention and treatment. As for a patient recognized in legal order as incompetent, the consent is given to him personally, except for the cases where the patient is in acute condition such consent is given by his legal representative and confirmed by the court.

16. The Ministry of Health has to adopt the rules for application of physical limitations and(or) isolation in accordance with Article 8 of the Law of Ukraine "On Psychiatric Help".

17. To amend Article 6 of the Law of Ukraine "On Psychiatric Help" for exceptions transferring confidential information without person's consent: "It is allowed to transfer information on mental health of individuals and provision of mental health care without their consent or without the consent of a legal representative for: 2) conduct of a pre-trial investigation based on suspicions or filing the person with an accusation of a crime or by a court order."

18. Bring the typical position of neuropsychiatric social care in order with state obligations under the UN Convention on the Rights of the persons with disabilities, regulating the following:

18.1. non-discrimination, reasonable accommodation - pointing at providing wards with all the necessary types of assistance, including rehabilitation services and the social services, access to which is currently missing (representation, social adaptation, crisis intervention, supported accommodation);

18.2. participation in decision-making – through the regulation of the procedure of study and considering the thoughts of wards during the organization of their life, and ability to provide them with training in the thematic framework of rehabilitation service "teaching of the basic social skills", input to staff of neuropsychiatric social care institutions positions of specialists with competence to provide the said services, namely, psychologist and social workers;

18.3. The right of choice of the place of residence - by introducing obligations for local authorities to ensure the provision of care services at home and supported accommodation for people who meet the criteria for being directed to neuropsychiatric social care institutions, but have their own homes;

18.4. the right to respect for family – by means of regulation of the ability to create or maintain a normal for this culture sexual relations;

18.5. maintaining the integrity and privacy of an individual - by ensuring normalization of securing the places for solitude of the wards (for example, of isolating a bed with a screen, partition, etc.), conduct of sanitation procedures without the presence of strangers, conditions for storage of personal belongings, help in caring for personal items, assistance in implementation contacts with relatives and friends, providing religious worship and participation in cultural events;

18.6. The right to work and employment - through standardization of creating conditions for work therapy for wards within the framework of their individual rehabilitation programs (input the required number of posts for labor instructors - according to the relevant valuation rates for rehabilitation facilities, as well as providing the need for a neuropsychiatric social care at workshops with the typical list of equipment for them);

18.7. Rehabilitation - through standardization of personnel and material security conditions for the implementation of individual programs of rehabilitation for wards, input for this purpose to the default state neuropsychiatric social care positions rehabilitation, physical therapy instructor, sports instructors.

19. To provide in a structure of a neuropsychiatric social care institution with the possibility of creating of such departments: supported accommodation, temporary/transit accommodation, day care, hospice care.

20. To approve the joint regulation of the Ministry of Social Policy of Ukraine and the Ministry of Health of Ukraine for provision of medical care to the wards of neuropsychiatric social care institutions, in particular, with the relevant institutions of medical personnel (doctors, middle and junior medical staff), measures of regenerative therapy, use of means of medical regulation...

21. To immediately regulate the activities of Public/supervising boards of trustees at social care institutions by means of introducing a neuropsychiatric social care order of the Minister approving a typical position on its activities.

22. To develop a procedure for registration, storage and monitoring of expenditure of the part of the pension of incapacitated wards (25%), the guardian for which is assigned by the institution.

23. To expand the category of persons eligible for service within a neuropsychiatric social care school from the third group of disability on the results of mental disorders, which have lost family and social ties and people with mental disabilities of pre-retirement age, who have lost property.

24. To amend the Order of the Ministry of Social Policy of 20.03.2012 No. 150, as amended by Order of 19.03.2013 No.129, moving "food services" to "services".

25. To ensure passage of neuropsychiatric social care licensing acquisition and possession of psychotropic drugs and neuroleptics. To carry out the acquisition of these assets for the state budget.

26. The regional branches of Social Welfare have to take measures to eliminate restrictive means (cages, etc.) in neuropsychiatric social care.

27. General Prosecutor of Ukraine must conduct monitoring and take measures to prevent the use of restrictive means (lattice cells) in neuropsychiatric social care.

28. To approve and provide funding for programs of rehabilitation and spa treatment of people-users of psychiatric help.

29. To add to the attestation of the requirements for experts of psychiatric hospitals and neuropsychiatric social care institutions issues related to the implementation of international standards on the rights of users of psychiatric care.

30. To import to the default state psychiatric hospitals, neuropsychiatric social care institutions a position of a social worker in the sphere of mental health.

Наукове видання

**«Права осіб із проблемами психічного здоров'я:
відповідність національного законодавства
міжнародним стандартам.
Контекст дотримання прав людини
у психоневрологічних інтернатах»**

(англійською мовою)

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