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PARTICULARITIES OF PROVIDING PSYCHIATRIC CARE UNDER THE LEGISLATION OF UKRAINE

Abstract. *The purpose* of the article is to analyze the particularities of psychiatric care and argue in favor of proposals to improve Ukrainian legislation on psychiatric care. **Research methods.** The article was written by applying general scientific and special cognitive methods, namely: hermeneutics, dialectical method, analysis and synthesis, systematization of legal research, generalization.

Results. The research analyses the concept of psychiatric care and provides a list of specific features of psychiatric care, which derive from theoretical sources and the current legislation of Ukraine. While justifying particularities, a great deal of attention is paid to individuals suffering from mental disorders caused by substance use as the statistics indicate that this group of patients is quite extensive but neglected. At the same time, it is worth mentioning that patients with a history of substance abuse do not often seek psychiatric care – the author has made some assumptions about the triggers of this process and possible solutions.

The contribution emphasizes that the concept of “psychiatric care” is a part of “medical care” and proposes dividing the provision of medical care into somatic and mental. This is driven by the fact that such practice is found in medical science and health care, and regulatory consolidation promotes systematization and law transparency for patients and doctors.

Attention is devoted to the object of psychiatric care, i. e., the mental state of a person. The study comments on the legislative lack of the concepts “a mentally healthy person” and “a person with a mental health problem” that negatively affects the understanding of the law. One of the peculiarities of providing psychiatric support covers the problem of autonomy of patients, who sometimes are unaware of their decisions about their preferences and interests. It is established that an intrinsic part of psychiatric care is compulsory medicine, the practice of which is widespread when providing the relevant psychiatric help.

Conclusions. Based on the research findings, the author argues that relevant particularities are not fully consolidated and regulated by Ukrainian legislation and need improving within medical reform.

Key words: medical care, provision of psychiatric care, compulsory medicine, human mental health, autonomy of patients, somatic medical care, psychiatric care for drug addicts.

1. Introduction

It is commonly believed that human life and health are the highest values – this is also mentioned in the basic law of Ukraine. Thus, according to article 3 of the Constitution of Ukraine, “An individual, his life and health, honour and dignity, inviolability and security shall be recognised in Ukraine as the highest social value” (Verkhovna Rada of Ukraine, 1996). However, the structure of the mechanism exercising values and rights depends directly on laws’ consistency, clarity, and accessibility.

The realm of medical care, including psychiatric, has recently been subjected to reforming, which slows down fighting against the COVID-19 pandemic. Although some steps towards improving the mechanism of providing

mental health services have been taken, most issues still require solving. Therefore, to comply with the principle of legislative consistency, it is critical to pay heed to the nature of particularities of psychiatric care and revise legislation by relying on them since psychiatric care is not inferior to somatic medicine and is also of importance. This emerges from the definition of “health” available in international acts, e. g. Mental Health Declaration for Europe (Mental Health Declaration for Europe: facing the challenges, building solutions, 2005), e. g. article 3 of the Law of Ukraine “Fundamentals of the Legislation of Ukraine on Health Care” (Verkhovna Rada of Ukraine, 1993). Consequently, **the purpose of the research** is to analyze the particularities of providing psy-

chiatric care and argue in favor of proposals to improve Ukrainian legislation on psychiatric care. The achievement of the mentioned purpose relates to the following **scientific research tasks**: to single out the concept of psychiatric care as a part of medical care; to analyze the legislative definition of psychiatric care and its particularities; to identify particularities affecting the specifics of psychiatric care.

Research methodology is based on the general scientific methods of cognition that contributed to the study: the hermeneutic method was focused on the theoretical interpretation of the concept of psychiatric care; the dialectical method provided a blueprint while dealing with a psychiatric field to regard it along with somatic medicine; analysis and synthesis were used to specify the features of legal frameworks of providing psychiatric care; the systematization of the legal research assisted in shaping a clear vision of specifics of the law on psychiatric care; generalization promoted summarizing findings and justifying the proposals.

2. Psychiatric care as a part of medical care, its concept and features

The state as an organized social structure commits to protect human life and health and thus, statutorily supports it through health care, rights to medical care and health insurance that is directly and indirectly provided by Article 49 of the Constitution of Ukraine "Everyone shall have the right to health protection, medical care and medical insurance. Health protection shall be ensured through state funding of the relevant socio-economic, medical and sanitary, health improvement and prevention programmes. The State shall create conditions for effective medical service accessible to all citizens. State and communal health protection institutions shall render medical care free of charge; the existing network of such institutions shall not be reduced. The State shall promote the development of medical institutions under all forms of ownership" (Verkhovna Rada of Ukraine, 1996).

This process is implemented through delivering medical care by health care facilities which meet the popular demands for medical services in the relevant territory. The legislator ascertains that medical care should be understood as the activities of trained medical workers aimed at prevention, diagnosis, and treatment due to diseases, injuries, poisonings, and pathological conditions, as well as in the case of pregnancy and childbirth (Verkhovna Rada of Ukraine, 1993).

Psychiatric care can be identified as a special type of medical aid taking into account the rule of art. 284 of the Civil Code of Ukraine, which specifies the scope of the right to medi-

cal aid. Therefore, one can conclude that legal relations in psychiatric care are a component of legal relations associated with the right to medical aid. Medical aid is a generic concept, one of the types of which is psychiatric. However, the before mentioned fact is not consolidated statutorily (Seniuta, 2018, p. 522).

Under the Law of Ukraine "On Psychiatric Care", psychiatric care is a complex of special measures oriented to the examination of mental health of individuals on the grounds and in the manner prescribed by this Law and other laws of Ukraine, prevention, diagnosis of mental disorders, treatment, supervision, care, medical and psychological rehabilitation of persons suffering from mental disorders, including due to substance use (Verkhovna Rada of Ukraine, 2000).

In the term "psychiatric care", the legislator stresses that the complex of special measures is applied to persons suffering from mental disorders caused by substance use. In this context, doctors point out that the use and abuse of psychoactive substances, alcohol, drugs, and toxic substances have spread sharply in recent years worldwide. The number of patients with addiction to psychoactive substances increases annually. This addiction is accompanied by mental-somatic and neurological disorders, which lead to significant socio-economic and moral losses. The number of teenagers and even children consuming alcohol, drugs, and toxic substances is growing (Havenko et al., 2015, p. 250). Drugs affect nerve cells and the cerebral cortex by disrupting their activity. An external influence of artificial substances on the normal mental state through toxic substances degrades a healthy psyche that may result in the loss of logical thinking, concentration, assimilation of new information, and memory impairment. Under long-term consumption, the deformation of the human personality begins, and severe mental illnesses make progress. According to figures provided by the Center for Medical Statistics of the Ministry of Health of Ukraine dated 2020, 509 306 persons were registered in a clinical group and 140 904 persons – in a preventive group by the end of the reporting period. Over the year, 23 900 persons were subjected to supervision at the early treatment center and 51 749 persons were registered with the preventive group for the treatment of patients with mental disorders due to psychoactive substance use (Report on the treatment of patients through the use of psychoactive substances, 2021). This group of patients is very significant, but persons with that sort of problem don't often seek help due to a lack of feeling that they are addicted, an effect, and a negative image of psychiatric care, which was developed during the UkrSSR, and poor awareness of modern

methods and tendencies of its provision. In the author's opinion, it would be expedient to keep the public informed and make some amendments to legislation. One of the positive practices was put forward in the report published within the project of NGO M'ART "The monitoring of Ukrainian legislation related to persons with mental health issues", namely, to state that a voluntary hospitalization of a person and the process of his/her treatment provide for the right to refuse treatment and the right to leave the medical facility voluntarily (Hromadska orhanizatsiia MART "Molodizhna AlteRnaTyvna", 2006, p. 42). Since legislation, namely art. 18 of the Law of Ukraine "On Psychiatric Care", only prescribes the procedure of filling a discharge application (Verkhovna Rada of Ukraine, 2000), this may advance the loyalty of this category of persons to psychiatry and positively influence the understanding and systematization of laws on psychiatric care.

Proceeding from the term of psychiatric care, it is essential to establish an object it is oriented to – human mental health. The legislator neither introduces nor defines a mentally healthy person and a person with a mental illness. However, it defines the concept "health" in article 3 of the Law of Ukraine "Fundamentals of the Legislation of Ukraine on Health Care" – according to the law, it is a state of complete physical, mental and well-being and not merely the absence of disease or infirmity (Verkhovna Rada of Ukraine, 1993). There is the same interpretation in the Preamble of the Constitution of the World Health Organization (World Health Organization, 1946). A more precise definition of the concept contributed to better adjustment of legislation to the concepts available in psychiatry.

3. Somatic and psychiatric treatment

Turning to the definition of psychiatric care, the author highlights the lack of a statutory fact that it derives from medical care, although legislative provisions on medical aid directly touch upon psychiatry as well. In the author's opinion, the absence of statutory and unspecified division into psychiatric and somatic treatment (care) seems illogical. Although the etymological concept "somatic" is derived from the Greek word "soma" – "body" (Popovych, Shavadyn, 2019, p. 265), it means diseases of the body and the current state of organs and systems (Mykhaliuk, Cherepok, Malakhova, 2013, p. 43). This division can be conditioned by the specifics of these two areas of medical care. For instance, psychiatry has a branch that helps determine a plan and strategy of psychiatric intervention, substantiates the use of any preventive and rehabilitation measures, and sets the choice of therapeutic

methods. Somatic medicine doesn't have that sort of criterion as there is no need to assess the meaningful activities of an individual. There is only an element of disease burden, the likelihood of death or illness perpetuation, and disability. Psychiatry can ambiguously interpret a burden of disorders. On the one hand, it can be assessed from the standpoint of the idea of mental health – a state of complete physical and mental comfort and well-being and thus, disorder burden is determined subjectively. On the other hand, it can be interpreted from the perspective of the concept of socially detrimental influence, which may be caused by mental illness (in extreme terms – danger to the lives of others and personal one) that drives an "unbiased" approach (Nykonenko, 2016, p. 71).

4. Patients' autonomy as one of the particularities of psychiatric care

The problems of patient autonomy are one of the particularities of psychiatric care and its difference from somatic care. According to I.Ya. Seniuta, psychiatry is the most vulnerable in terms of the violation of human rights in the field of medical aid, taking into account the features of the health condition of patients and profound ethical ground of the issue. This subsequently spawns ethical and legal dilemmas in the doctor-patient relationship – a patient with mental health issues is authorized to exercise his rights consciously and voluntarily – and changes the paradigm of confidentiality and the patient's autonomy.

Patients' autonomy, an ability to make reasonable decisions about one's preferences and interests, relies on the relevant ability and is a basis for partner relations in medicine. Since the actions of a patient with mental health issues are not consistent with that model of personality who is able to follow his interests, which is a ground of the autonomy idea, it is prohibited to treat him as an unhealthy person whose thoughts and feelings remain more or less undisturbed. The fact that any mental illness affects the character, desires, thoughts, and feelings of a patient calls into question whether the person's intentions in treatment can play the same crucial role as in other clinical cases. Thus, it seems that both compulsory and voluntary forms of psychiatric care have areas of concern (Seniuta, 2018, p. 517).

In such a case, the commission of inquiry and the chief physician must check whether the patient was able to make a rational decision about his treatment and whether it was urgent to take the necessary measures to prevent the death of the patient caused by mental illness.

By referring to the ECHR, I.Ya. Seniuta also draws attention to two problems which may arise: 1) the competence of a person with a men-

tal illness to make decisions on the delivery of psychiatric care; 2) the competence of a person with a mental illness to make decisions on the delivery of other types of medical care.

5. The practice of compulsory psychiatric care as one of the special types of medical aid

By delving into particularities, the author pays attention to compulsory medicine. International law, namely the Convention for the Protection of Human Rights and Fundamental Freedoms ascertains in art. 5 (1) that everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law. One of such cases is the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants (Council of Europe, 2010). This rule is also conveyed in art. 53 of the Law of Ukraine “Fundamentals of the Legislation of Ukraine on Health Care” that consolidates special measures of prevention and treatment of socially dangerous diseases, which include tuberculosis, mental, venereal diseases, AIDS, leprosy, chronic alcoholism, drug addiction and quarantine diseases, the procedure for hospitalization and treatment of such patients, compulsorily as well (Verkhovna Rada of Ukraine, 1993). In other words, the legislator states expressly that the treatment of the above diseases can be conducted compulsorily due to their social danger. The most widespread practice is the process of delivering compulsory aid to a person, but it shall be applied only in cases of failure to deliver care voluntarily that should be supported by collegial decisions of mental health specialists, involvement of independent psychiatrists, verification of the legitimacy of the decision by both the court and executive authorities (Gvozdyk, 2020, p. 194).

The Law of Ukraine “On Psychiatric Care” consolidates several types of psychiatric care, as follows: mental state examination, ambulatory psychiatric care, and institutional psychiatric care. Following a particular court decision, each of these types of psychiatric care can be used towards a person compulsorily. Thus, under the rules of art. 235 of the Civil Procedural Code, the court considers the following cases of compulsory delivery of psychiatric care in the manner of individual proceedings: 1) compulsory implementation of mental health examination; 2) compulsory provision of ambulatory psychiatric care to a person; 3) compulsory extension of ambulatory psychiatric care of a person; 4) compulsory termination of delivering ambulatory psychiatric care; 5) compulsory hospitalization of a person to a psychiatric facility; 6) keeping compulsory hospitalization of a person in a psychiatric facility; 7) compulsory termination of the hospitalization of a person in a psychiatric facility (Dubchak, 2010, p. 184).

6. Conclusions

Consequently, keeping in mind the above-mentioned, one can conclude the following. First, the concept of psychiatric care and legal relations in psychiatry comprise many particularities and subtle aspects, which concern a vulnerable category of persons who may have issues with psychoactive substances, realization and making decisions about their principles and values. Second, the analysis of legislative acts and theoretical framework allows emphasizing that the relevant particularities were not fully consolidated and regulated in the current legislation of Ukraine. Third, that kind of systematization of legislation adversely affects the clearness and transparency of statutory instruments because they primarily touch upon patients and health professionals in the field of psychiatric care who follow the general and specific principles of its delivery.

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ОСОБЛИВОСТІ НАДАННЯ ПСИХІАТРИЧНОЇ ДОПОМОГИ ЗА ЗАКОНОДАВСТВОМ УКРАЇНИ

Анотація. Метою роботи є аналіз особливостей надання психіатричної допомоги та аргументування пропозицій з удосконалення законодавства України з надання психіатричної допомоги. **Методи дослідження.** Дослідження виконано із застосуванням загальнонаукових та спеціальних методів пізнання, наприклад герменевтичного, діалектичного методів, аналізу й синтезу, систематизації правового дослідження, узагальнення.

Результати. У дослідженні здійснено аналіз поняття психіатричної допомоги та сформовано перелік особливостей надання психіатричної допомоги, які постають із теоретичних матеріалів і чинного законодавства України. У процесі обґрунтування зазначених особливостей велика ува-

га приділяється особам, які страждають на психічні розлади внаслідок вживання психоактивних речовин, оскільки статистичні дані свідчать про те, що ця категорія пацієнтів є досить численною, проте їй не приділяється достатньої уваги. Водночас варто підкреслити, що пацієнти з наркотичною залежністю майже не звертаються за психіатричною допомогою. Наведено декілька припущень, що саме може слугувати причиною цього, та шляхи можливого вирішення зазначеної проблеми.

У статті наголошується на тому, що поняття «психіатрична допомога» є частиною терміна «медична допомога», та пропонується поділити надання медичної допомоги на соматичне і психічне. Це зумовлено тим, що такий розподіл існує в медичній науці та сфері надання медичного обслуговування, а нормативно-правове закріплення допомоги в питанні систематизації та передбачуваності законодавства для пацієнтів і лікарів.

У дослідженні приділяється увага об'єкту психіатричної допомоги, а саме стану психічного здоров'я людини. Робиться зауваження щодо відсутності в законодавстві понять психічно здорової та психічно хворої особи, що чинить негативний вплив на розуміння законодавства. Однією з особливостей надання психіатричної допомоги визначено проблему з автономією пацієнтів, які в деяких випадках не усвідомлюють власні рішення щодо своїх переваг та інтересів. Встановлено, що важливою частиною сфери надання психіатричної допомоги є примусова медицина, практика якої поширена в разі надання психіатричної допомоги.

Висновки. За результатами проведеного дослідження аргументовано, що відповідні особливості неповною мірою закріплені й урегульовані в законодавстві України та потребують удосконалення в межах медичної реформи.

Ключові слова: медична допомога, надання психіатричної допомоги, примусова медицина, психічне здоров'я осіб, автономія пацієнтів, соматична медична допомога, психіатрична допомога наркотично залежним.

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