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## Amendments to the treatment regulations at a psychiatric hospital as the element shaping culture in terms of human rights

### Abstract

A psychiatric hospital is a special place. People undergoing treatment are in a unique situation. Mental illness remains a mystery for scientists because we do not know what factors influence its appearance. There were also no drugs that would completely cure the patient, as you never know whether the medicine will affect a particular person. Mental illnesses evoke anxiety and fear of the community. Some patients take disturbing or dangerous actions. Their behaviors are referred to as specific and different ones. A similar situation is caused by the appearance of psychotic symptoms. One should pay attention to delusions and hallucinations here. These symptoms cause the patient's situation to deteriorate. Ultimately, they can cause dangerous behavior.

It happens that a relative of a patient, who is in such condition, must take action without his/her consent. A similar issue has been analyzed in Poland for almost thirty years. Individual regulations, in exceptional cases, allow for undertaking coercive actions: treating the patient without consent, applying direct coercion. These interventions are controlled. Polish psychiatric legislation is constantly changing (new control institutions are introduced, the role of the family court is increased). This article presents the latest amendments. They are based on the principle of respect for human rights and freedoms.

**Keywords:** human dignity, human rights, mental illness, direct coercion, patient treatment without consent, social welfare home.

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### INTRODUCTION

In the mid-December, 2017, the President of Poland undersigned the amendment to the Mental Health Protection Act [1]. It refers to the special value, that is presently the dignity of people experiencing mental disorders. The problem of situation, which the people experiencing mental disorders have to face, is constantly an interesting case for the representatives of legal and social sciences. For more than fifty years, we have observed in Polish psychiatry the phenomenon so called self-regulation. Polish psychiatrists have made initiatives oriented on introducing the protection of human rights standards for a human being treated in a psychiatric hospital. The remarks on last modification in the "Psychiatric Act" are presented below. The Polish legislator has decided to introduce amendments, that may serve for a pattern when shaping the respectful behaviour towards the patients experiencing mental disorders [2]. A preliminary analysis of the proposed changes is presented below. It refers to the method of analyzing documents - legal materials (laws and regulations).

#### Contents of the amendment - problem of isolation

On December 19, 2017, the President of the Republic of Poland undersigned the amendment to the Mental Health Protection Act (hereinafter referred to as the Amendment). It should be noted that adoption of this document is an extremely positive action, directly referring to the required special protection of human rights for people experiencing mental disorders.

It is stipulated in the amendment, that legally incapacitated people obtain an important protection of their rights. In the first place, the necessary treatment of all people as subjects is stipulated, irrespective of the diagnosis. It involves the introduction of the guardianship court supervision in all cases pertaining to the people with mental disorders, who are referred to Social Welfare Homes. So far, a statutory representative had a special role in similar cases – he most often made all decisions on placing a person without the consent, who was under his custody, in a similar facility [3,4]. This state of affairs was in contrary to the content of art. 156 of the Family and Guardianship Code, according to which "the Guardian shall obtain the permission of the Guardianship Court in every more important matter, that concerns the minor in person or his property." We should remember, that art. 175 of the Code, hereto also refers to the cited regulation, according to which "In the custody on the legally incapacitated person, the guardianship provisions concerning a minor shall be strictly applied, in compliance with the provisions hereunder" [5]. Reassuring, by the end of 2017 at the territory of Poland, the legal guardian could make particularly important decisions related with the legally incapacitated person, without any control of an autonomous authority, such as the guardianship court.

It is also stated in the provisions of the amended Act that attention is drawn to the position of the legally incapacitated person, who is at the same time oriented in own situation. Before taking a person to the Social Welfare Home (referred hereinafter to as the SWH), such person should be asked for

the opinion concerning taking him to such facility. From January 1, 2018, such person may request for a discharge “from such facility and psychiatric hospital. In the discussed amendment, the legal support for a person compulsorily referred to a SWH or a psychiatric hospital is also provided. The proposed solutions are fully in line with the position adopted by the Constitutional Tribunal of the Republic of Poland in 2007, according to which, during the provided custody on a completely incapacitated person, the goodness and dignity of such person should be taken into account in a special way. These activities shall be accompanied with constant analysis of the health state of the legally incapacitated person, who, despite experiencing psychological disorders, may have competences required for making pro-active decisions on the matters important for him/her [6,7].

### Application of force against a human being

Here, the key changes for application of direct coercion (immobilization, holding, isolation and compulsory administration of drugs) should be also noted. Following constitutional standards of respecting human rights and freedoms, the introduction of numerous guidelines to the Act concerning direct coercion should be assessed as a positive case. The principles referred above were the components of the Minister of Health ordinance, in which behavioural rules and rules for documentation on direct coercion were stipulated [8,9]. However, the content of an article 31 clause 3 of the Constitution of the Republic of Poland should be recalled here, according to which “Restrictions on the use of constitutional rights and freedoms may be established only in the Act and only when they are necessary in a democratic state for its security or public order, or for protection of environment, health and public morality, or freedoms and rights of others” [10,11].

Referring here to the application rules for direct coercion, it should be pointed out that in the discussed amendment, the ways for application of coercion also at the wards other than a psychiatric one is also introduced. Such activities shall commence in accordance with the principles of the stipulated “Psychiatric Act”. Until now, the staff of the neurological, paediatric or internist wards pursued similar, often necessary, activities without any legal basis. This state was clearly in contradiction to the standards referred above from the Art. 31 clause 3 of the Constitution of the Republic of Poland, allowing for restriction of civil rights and freedoms. Coercive activities oriented on i.e. securing the aggressive patients in other than psychiatric wards, were not defined in any document in ranks of Act. It should be noted as a positive factor, that the principle, according to which paramedics will be allowed for direct coercion in the form of compulsorily admitted drugs during transportation to the hospital, is introduced. It happened many times, when a Medical Rescue Team has transported a psychomotor hyperactive patient, that such team could only immobilise or hold such person, what was a coercive activity. A patient who was i.e. in the state of anxiety, could not be calmed down in any way [12,13]. Similar activity has infringed the principle of the least nuisance, which, according to Art. 12 and 18 clause 8 of Mental Health Protection Act, is binding when using direct coercion. According to the regulations that are here referred to, bringing back a patient with mental disorders to a proper health state should take place in such a way, that is as least disruptive to him as possible [14,15].

### Notes

However, the Art. 38 clause 3 of the amended Mental Health Protection Act is worrying, because “Admitting a minor or a totally incapacitated person to the Social Welfare Home shall take place as following written consent of its statutory representative. The statutory representative gives consent after the permission obtained from the guardianship court with jurisdiction over the residential place of such minor or such totally incapacitated person”. For incomprehensible reasons, parents of the child referred to the Social Welfare Home were also listed among people obliged for consent of the guardianship court. Similar proceedings are obviously justified, but only in relation to the statutory representatives of persons, who are not under the parental control (often such person is not related to a child who is under the care of a given facility). Parents, in accordance with the Art. 48 clause 1 of the Constitution of the Republic of Poland, have full right of freedom in terms of the educational activity concerning their child. The consent of the Guardianship Court in all matters important for a person in custody is required under the Family and Guardianship Code, but only from the statutory representatives of a child, not his parents. In turn, it is stated in the Art. 24 of the referred Code, that “Spouses decide jointly on all important family matters; in the event of disagreement, each of them may refer the case to the court for its settlement”. Therefore, eventual decision on settling a particular case in the court is in the hands of parents, who are special guardians for a child. It is stipulated in the enacted amendment that every person having custody on a child, who is referred to the SWH, shall obtain the consent of the court. However, such activity directly undermines the constitutionally guaranteed standards of respecting the parental authority and the autonomy of the family. Therefore, it automatically undermines good intentions of parents [16,17].

### CONCLUSIONS

The protection of psychiatric hospital patients’ rights is of particular importance [18]. It pertains to the situation, in which a person who may have significant difficulties in understanding the messages addressed to him, is being diagnosed and treated. Thus, important challenges occur in such respect [19]. Firstly, it should be noted, that treatment of people with mental disorders (similarly to other cases) should be based on the reliable information given to a patient. Only the informed patient can give a conscious consent for treatment. It is stated in the Polish Mental Health Protection Act, that a patient’s consent should be understood as “a consciously given consent of a person with mental disorders, who, irrespectively of the psychical health, is actually capable of understanding the information delivered in an accessible way on the purpose of admission to the psychiatric hospital, own health state, proposed diagnostic and treatment activities, as well as foreseeable effects of such activities or withdrawal from them”. It is clearly stated in such definition, that decision on treatment should be made by every patient, who understands own situation, in which he/she is located. Therefore, such legally incapacitated person, capable of understanding the addressed communicates, should participate in similar legal and medical procedures. The latest amendment to the Mental Health Protection Act introduces special changes that are important in relation to the standards of respecting human rights in Poland [20-22]. Placing a given person in a welfare or a medical institution without given

consent should always be related with similar consent of the court, thus the consent of independent body. Procedures regarding application of direct coercion are subjected to more detailed control. A patient experiencing mental disorders may benefit from the help of a lawyer in a simpler way [23,24]. Similar activities clearly and positively influence the development of culture in terms of human rights. However, a particular situation of people experiencing mental diseases and disorders requires constant reflection on the validity of adopted legal and medical solutions [25].

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