

Peace can never be ensured where there is no respect for human rights, children are starving and people are not free.

-Dalai Lama.

This spiritual leader of Tibet is one of numerous people who highlighted the importance of human rights worldwide – from Cicero and Ulpian, the jurists of ancient Rome, to politicians and artists of the 20th century such as John Lennon, Martin.Luther King, K. Annan etc. All of them have realized and pinpointed that human race could not progress without accompanying guarantees of individuals such as right to live, right of freedom, personal integrity, private life and many others. In order to ensure inherent human rights and prevent them from all kinds of violations, international community has issued series of documents. The Universal Declaration of Human Rights is one of the most outstanding. Its first article¹ states the concept of fundamental human rights and implicitly requires every state to ensure them.

Unfortunately, Lithuania with its two decades of democracy and the membership of international organizations such as EU and NATO is still unable to fully ensure the security and legal guarantees of fundamental human rights. This paper is to analyze a specific legal problem which is related with one of the fundamental human rights - the right of personal freedom – and its breaches in Lithuania. The object of analysis - the involuntary hospitalization, which is one of many ways to limit a person's freedom. The relevance of the subject can be exemplified by the fact that there is a number of severe cases in Lithuania when violations of human rights were made during the process of involuntary hospitalization. The paper starts with the description of the problem, followed by its legal regulation in various laws including Lithuanian legislation. Later it dwells on the specific cases of the problem and concludes with the proposed solutions.

In various international legal documents, in particular - the European Convention of Human Rights², a lot of attention is paid to the right of personal freedom. This right must be ensured by each state, Lithuania being not an exception. In fact, the mechanism of ensuring and preventing this right from violations is different in each country. In Lithuania it starts with the basic law of the country – the Constitution of the Republic of Lithuania in which the principle of the inviolability of personal freedom is formulated³. The ways and conditions how to limit the right of personal freedom are specified in such national laws as the Criminal Procedure Code, which governs detention and arrest, the Criminal Code, governing custodial sentence, the Administrative Offences Code, which governs administrative detention and the Civil Code⁴, which governs guarantees for mentally ill people.

Human rights are not absolute. The right of personal freedom is not an exception. The European Convention of Human Rights⁵, which was previously mentioned, points mental illness as one of restrictive terms of this right. It follows that restriction of personal freedom by forced hospitalization is legal itself, unless the hospital grounds and procedures comply with international and national statutory requirements.

The first problem, which is related to involuntary hospitalization in Lithuania, is that Civil Code and Mental Health Act rules, governing the compulsory treatment, are controversial. There is a list of grounds in Civil Code⁶ which legitimate forced treatment. These grounds are: severe mental illness and a real risk that person might make material injury to others' health, life or property. The law, unlike the

¹ *All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood;* The Universal Declaration of Human Rights, Article 1;

² The European Convention of Human Rights, Article 5;

³ Constitution of Republic of Lithuania, Article 20;

⁴ Civil Code of Republic of Lithuania, Article 2.26;

⁵ The European Convention of Human Rights, Article 5;

⁶ Civil Code of Republic of Lithuania, Article 2.26;

Code, does not provide a threat to property as a basis for involuntary treatment. Since the norms of law apply to the extent compatible with the Code, there may be situations in practice when mental patients are involuntarily hospitalized for making violation of property damage. In my opinion, the legislature bodies should initiate an amendment of the Civil Code Article 2.26 paragraph 4 and eliminate a threat of property damage as a condition for forced hospitalization.

The second problem is related with a right for an involuntary hospitalized person to appeal the judicial authority of involuntary hospitalization. For this issue attention is drawn by The European Court of Human Rights⁷. Unfortunately, in Lithuania the judicial authorization of involuntary hospitalization can not be appealed from the date of its adoption⁸. This conclusion is based on the provisions of Chapter XXXIX of the Code of Civil Procedure and the fact that the case for a permit must be examined promptly, as soon as possible. On the other hand, a person, who is suspected of a criminal offense, can appeal the arrest order⁹. Thus, we face the question – are the rights of involuntary hospitalized people ensured and protected enough without giving them a chance to appeal the court's permission? In my opinion, the legislature bodies should initiate an amendment of the Code of Civil Procedure, Article 582, paragraph 6 and strengthen the possibility of the patient or his representative to appeal a permit for involuntary hospitalization, issued by the court.

To make matters worse, a realization of involuntary hospitalization in Lithuania does not fully comply with international and national legislation. In international arena¹⁰ there is a rule that a right to personally appear in court when the question of forced hospitalization is being considered can be limited, but can not be ruled out. However, the situation in Lithuania is a little different. Although it is stated¹¹ that a patient or his representative has a right to attend and be heard in the case of involuntary hospitalization, and a psychiatrist may limit this right just for serious mental condition of a person, in many cases, psychiatrists add a comment that the patient is unable to attend the hearing by themselves¹². In my opinion, solving this problem, the legislature bodies should provide more guarantees for people who are forcibly hospitalized and higher limits of liability for violations of rights of these people. Furthermore, human rights monitoring bodies should carry out regular monitoring of mental health care institutions and record human rights violations in order to prevent further violations. Legislative bodies should also create terms of monitoring and liability for breaches of these terms.

The last but not the least problem is an abandoned mental health care system in Lithuania. Over the past few decades, the importance of transformation of mental health care system was perceived¹³. The system should promote respect for its patients and increase their integration into society, refuse isolation, stigma, ignorance and contempt. However, the mental health care system in Lithuania fails to secure sufficient government attention, that is why an obsolete role of mental health care institutions, its functions and working methods exist¹⁴. As a proof the following breaches of human rights which exist in Lithuania's

⁷ The case of The European Court of Human Rights; (1997, *Johanson v. United Kingdom*);

⁸ Code of Civil Procedure, Article 582, paragraph 6;

⁹ Republic of Lithuania Code of Criminal Procedure, Article 130, paragraph 1;

¹⁰ Principles of protecting people with mental illness, issued by General Assembly in 17th, December, 1991; The case of The European Court of Human Rights; (1997, *Johanson v. United Kingdom*);

¹¹ The Mental Health Law, Article 22;

¹² The report of "Human Rights Monitoring in Mental Health Care Institutions" (2005), conducted by Human Rights Monitoring Institute;

¹³ It was highly influenced by Principles of protecting people with mental illness, issued by General Assembly in 17th, December, 1991;

¹⁴ The report of "Human Rights Monitoring in Mental Health Care Institutions" (2005), conducted by Human Rights Monitoring Institute;

mental health care system may be pointed out¹⁵: 1) Violations of the right to privacy (poor conditions of residence, living in large groups, no individual accommodation, etc.). 2) Discrimination (the provision of staff benefits to favorite people, discrimination of more serious patients and domestic improvement of material support given by relatives, etc.) 3) Violations of the prohibition of torture (severe penalties in the physical, psychological and sexual violence against patients, etc.), 4) the right to freedom of movement disorders (e.g. a resident of a limited capacity can not visit his father's grave, etc.), 5) violation of right to property, education, employment, information, etc. My modest suggestion would be, the system of centralized psychiatric hospitals should be liberalized in order to be open to the public. The best would be significantly reduce the centralized mental health authorities and create a network of rehabilitation services and tools to assist patients to participate in public life, to be among the people. It is also necessary to change legal and financial regulations of such institutions. It would form a competitive environment among the institutions and it would improve patients' living conditions and thereby reduce human rights violations.

All things considered, the international institute of human rights, which originated in Ancient Rome, remains one of the most important and urgent parts of legal system. However, international and national legislation can not guarantee absoluteness for all of them. There are cases when two values face each other leading to the legal impasse - what to do next? One of the values will always be higher because they both can not win. That is why in such a situation one has to be limited by other which is more important. The question - whose interests - public or individual - are above the involuntary hospitalization? No matter how much attention I would have allocated to the rights of people who were involuntary hospitalized, I think that to raise patient's interests above his family and public interests can not be allowed. It must be remembered that the forced hospitalization is ultima ratio and should only be used if there are no other alternatives.

¹⁵ The report of "Human Rights Monitoring in Mental Health Care Institutions" (2005), conducted by Human Rights Monitoring Institute;