

# TENDENCIES IN THE DEVELOPMENT OF LEGISLATIVE SUPPORT IN THE SPHERE OF MENTAL HEALTH OF THE POPULATION IN UKRAINE AND SPAIN

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## I. INTRODUCTION

Improving guarantees for the rights of citizens in the field of mental health is one of the most important indicators of state policy in ensuring human rights

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and freedoms. The sphere of mental health has as its subject a system of institutional, organizational, and legal means aimed primarily at ensuring the rights of citizens who, due to mental health, constitute a socially vulnerable part of the population. After all, depending on the nature of mental disorders, the behavior of persons suffering from such diseases may have risks both for themselves and for others. At the same time, functional restrictions, also associated with the recognition of shortcomings in the legal capacity of such persons, always contain risks of violation of their rights. Therefore, in the context of a system of universally recognized standards of human rights and freedoms, this area requires special legal regulation that comprehensively takes into account the mental health, social and legal, status of such persons. At the same time, the state of legislation in this area is a marker of the inclusiveness of state policy on the approval of the principles and conditions of life, in which the honor and dignity of a person are not only declared as social values, but through the instrumental provision of the

inalienable rights of persons whose social vulnerability is due to mental disorders, strengthening civilizational foundations for organizing social life on the basis of freedom, equality and justice. Therefore, the question of the tendency in the development of legislative support for the sphere of mental health in the context of the experience of individual countries, in particular Ukraine and Spain, is relevant, including taking into account the modern challenges of ensuring peace and development stability in the European region.

## II. INTERNATIONAL LEGAL STANDARDS FOR ENSURING THE SPHERE OF MENTAL HEALTH OF THE POPULATION

General standards in the field of human rights and freedoms define universal international acts, among which the Universal Declaration of Human Rights is of fundamental importance.<sup>2</sup> It enshrined the right of every person to such a standard of living, including food, clothing, housing, medical care, and

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<sup>2</sup> Universal Declaration of Human Rights, United Nations (1948).

the necessary social services needed for the health and well-being of person and his or her family.<sup>3</sup> Although the Universal Declaration of Human Rights is not in itself a legally binding document, it establishes a fundamental set of human rights, which includes the right to an adequate standard of living, like, among other things, medical care and necessary social services, as well as the right to security in the event of unemployment, illness, and disability.<sup>4</sup> This applies, in particular, to mental health, which requires the creation of appropriate conditions for the functioning of the mental health care system so that people can fully exercise their rights. The International Covenant on Civil and Political Rights, the International Covenant on Economic, Social, and Cultural Rights, and their protocols to a certain extent specified the relevant provisions of the Declaration.<sup>5</sup> In particular, part one of Article 12 of the International Covenant on Economic, Social, and

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<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* International Covenant on Civil and Political Rights (1966). International Covenant on Economic, Social and Cultural Rights (1966).

Cultural Rights imposes obligations on Member States to recognize the right of every person to the highest attainable standard of physical and mental health.<sup>6</sup>

The Convention on the Rights of Persons with Disabilities establishes special guarantees of rights and freedoms specifically for persons with mental and behavioral disorders.<sup>7</sup> Article 1 defines persons with disabilities as those with long-term physical, mental, intellectual, or sensory impairments that, in interaction with various barriers, may prevent their full and effective participation in society on an equal basis with others.<sup>8</sup> The Convention, in particular, declares the principles: respect for the characteristics of persons with disabilities and their acceptance as a component of human diversity and part of humanity,

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<sup>6</sup> International Covenant on Economic, Social and Cultural Rights (1966).

<sup>7</sup> Convention on the Rights of Persons with Disabilities, United Nations (UN) General Assembly (2006), <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/convention-on-the-rights-of-persons-with-disabilities-2.html>. Convention on the Rights of Persons with Disabilities, Office of the High Commissioner for Human Rights (2006), available at <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities>.

<sup>8</sup> *Id.*

respect for the abilities of children with developing disabilities, and respect for the right of children with disabilities to preserve their individuality.<sup>9</sup>

Relevant advisory documents adopted by the United Nations (UN) General Assembly are also of universal importance in terms of setting standards in this sphere. One of the first is the Declaration on the Rights of Mentally Retarded Persons, proclaimed by General Assembly Resolution 2856 (XXVI).<sup>10</sup> Its purpose is to serve as a common basis and guide for the protection of these rights.<sup>11</sup> It determines that a mentally retarded person has, to the maximum extent possible, the same rights as other people,<sup>12</sup> the right to adequate medical care and treatment, as well as the right to education, training, rehabilitation, and protection, which will allow him or her to develop his or her abilities and maximum opportunities,<sup>13</sup> the right to material security and to a satisfactory

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<sup>9</sup> *Id.*

<sup>10</sup> Declaration on the Rights of Mentally Retarded Persons, General Assembly Resolution 2856 (XXVI) (1971).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at paragraph one.

<sup>13</sup> *Id.* at paragraph two.

standard of living,<sup>14</sup> the right to stay with his or her family as far as possible,<sup>15</sup> or with a qualified guardian,<sup>16</sup> and the right to protection from exploitation, torture, and inhuman and degrading treatment or punishment.<sup>17</sup> The Principles for the Protection of Persons with Mental Illness and the Promotion of Mental Health, approved by the UN General Assembly in resolution 46/119,<sup>18</sup> contain a set of rules for the treatment of persons with mental or behavioral disorders, and also proclaim equality and the prohibition of discrimination against such persons (principles one, two), the right to live in society (principle three), and the right to privacy (principle six), and indicate a standard of procedure for the handling and treatment of persons with certain

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<sup>14</sup> *Id.* at paragraph three.

<sup>15</sup> *Id.* at paragraph four.

<sup>16</sup> *Id.* paragraph five.

<sup>17</sup> *Id.* paragraph six.

<sup>18</sup> Principles for the Protection of Persons with Mental Illness and the Promotion of Mental Health, UN General Assembly, Resolution 46/119 (1991). “Principles for the protection of persons with mental illness and the improvement of mental health care,” Office of the High Commissioner for Human Rights (1991), <https://www.ohchr.org/en/instruments-mechanisms/instruments/principles-protection-persons-mental-illness-and-improvement>.

mental or behavioral disorders. The UN General Assembly Resolution A/RES/48/96 adopted the Standard Rules for the Equalization of Opportunities for People with Disabilities,<sup>19</sup> which includes the prerequisites for equal participation, areas for the implementation of relevant participation tools, and control mechanisms. The Convention on the Rights of Persons with Disabilities, adopted within the framework of the UN General Assembly, subsequently became an international human rights treaty aimed at protecting the rights and dignity of people with disabilities.<sup>20</sup> It is obvious that all the principles and norms of value content proclaimed in international legal acts of a general nature find refraction and development in branch and special professional acts, standards, protocols, etc.

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<sup>19</sup> Standard Rules for the Equalization of Opportunities for People with Disabilities, UN General Assembly Resolution A/RES/48/96 (1993).

<sup>20</sup> Convention on the Rights of Persons with Disabilities, UN General Assembly (2006).



Thus, the World Health Organization (WHO)<sup>21</sup> defines the basic principles for the organization of mental health services:

1. protection of human rights—avoiding any restrictions on rights, respecting the independence of the patient, and ensuring decent conditions and proper methods of treatment for everyone;
2. accessibility—the provision of psychiatric care to the patient at any time and in any area, including remote areas (rural areas);
3. comprehensiveness—the provision of psychiatric care in all forms and types in accordance with the real needs of the population;
4. continuity and consistency—the possibility of providing psychiatric care constantly, at any time in conditions of clear consistency and coordination between doctors of all specialties;
5. effectiveness—the effectiveness of psychiatric care based on the application of the latest achievements of science and scientific validity;
6. equality—providing adequate psychiatric care to all who need it and without any restrictions; and
7. economic efficiency—the maximum effectiveness of financial and other material resources allocated to mental health services.

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<sup>21</sup> H. HERRMAN, SH. SAXENA, & R. MOODIE (EDITORS), PROMOTING MENTAL HEALTH: CONCEPTS, EMERGING EVIDENCE, PRACTICE (2005).

Nevertheless, the models of organization of mental health care services in different countries have their own, due to many factors, features. The Ukrainian mental health system is still based on elements of the structure of the Soviet health care system, many of which require revision. As guidelines for solving problems in the field of mental health, the government of Ukraine relies on the positive experience of certain foreign countries, including the achievements in this area of Spain.

These principles, problems and main priorities in the field of mental health—a comprehensive system for the prevention, diagnosis, treatment, and rehabilitation of mental disorders<sup>22</sup>—allow us to identify the main tasks for improving the mechanism of psychiatric care:

improvement of methods for the prevention of mental disorders, development and implementation of counseling assistance, and training

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<sup>22</sup> V. Lashkul & I. Bibyk, *Analysis of the Legal Framework Governing the Work of Mental Health Services Ukraine*, 2 BUL. SOC. HYGIENE & HEALTH PROTECTION ORG. UKRAINE 4 (2017).

programs for the population on mental health and suicide prevention;

improvement of methods for diagnosing and treating mental disorders, and the introduction of team forms of work in a psychiatric hospital, day hospital, and neuropsychiatric dispensary; and

socialization of patients with severe mental disorders after intensive inpatient treatment.

Obviously, issues of medicine should be submitted in connection with the above-mentioned problem of legislation.

Observing the principles of providing medical care for mental and behavioral disorders, the following conditions must be met:

1. **Accessibility**—the provision of medical care to patients with mental and behavioral disorders should be carried out at the primary level. That is to say, at the request of the patient, mental health care should be provided by a general practitioner/family doctor.
2. **Continuity**—continuous access not only to medical care, but also assistance in social and professional adaptation, solving psychological problems for patients who need it.

3. A full range of services—not only the provision of medical care, assertive therapy, but also sanatorium-resort treatment, support and intervention in times of crisis, the solution of social problems related to housing, employment, the provision of emergency assistance by special services that must work around the clock.
4. Adaptability—health services should provide services according to the needs of patients.
5. Efficiency—the development of services for patients with mental and behavioral disorders must be effective, i.e. guided by the principles of evidence-based medicine.
6. Emphasis on rehabilitation—that is to say, after successful treatment with medications or against this background, it is necessary to introduce active rehabilitation. The introduction of new generations of antipsychotics with lower side effects on the pharmaceutical market improves the rehabilitation process.
7. Help from relatives—the participation of family, guardians, friends in the process of rehabilitation, social and professional adaptation of patients.
8. Prevention—conducting explanatory and training sessions in all educational institutions of the country, at large enterprises. If possible, eliminate and prevent risk factors.
9. Justice—that is to say, all segments of the population, regardless of their social status, place of residence, nationality, should receive the same medical care, rehabilitation, social and professional assistance.

### III. THE MAIN TENDENCIES IN THE DEVELOPMENT OF LEGISLATIVE SUPPORT IN THE FIELD OF MENTAL HEALTH OF THE POPULATION IN SPAIN

Article 43 of the Spanish Constitution recognizes the right to health care.<sup>23</sup> It is noteworthy that the Spanish Constitution separates which issues in the health sector the state is responsible for, and in which it contributes to their solution. It says that public authorities are responsible for organizing public health through preventive measures and necessary benefits and services. However, public authorities promote health education, physical education and sports, and encourage proper leisure activities.

Spain has a public health system. Publicly funded health care is funded by revenue generated from state, provincial, and municipal taxes. Thus, the Spanish state grants its people the right to health care,

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<sup>23</sup> Article 43 of Constitution of Spain (1978). *See* World Health Organization, "Spain: Assessing Health System Capacity to Manage Sudden Large Influxes of Migrants" (2018), available at [https://cdn.who.int/media/docs/default-source/documents/publications/spain-assessing-health-system-capacity-influx-of-migrants0fc727bc-4ae1-4c24-9759-804672c202ec.pdf?sfvrsn=636e69cd\\_1&download=true](https://cdn.who.int/media/docs/default-source/documents/publications/spain-assessing-health-system-capacity-influx-of-migrants0fc727bc-4ae1-4c24-9759-804672c202ec.pdf?sfvrsn=636e69cd_1&download=true).

relying mainly on the public sector, just over 70%, which ensures the universalization of the national health service: every citizen of Spain is guaranteed health care, since the costs are mainly covered by the state. At the same time, health care financing in Spain remains decentralized. Regional authorities independently decide the procedure for spending funds allocated from the state budget, due to the fact that they are entrusted with the functions of providing medical care. The remainder, about 30%, is privately funded through “voluntary” payments.<sup>24</sup>

In Spain, as a result of the adoption of the General Law on Health,<sup>25</sup> the national health system (NHS) is decentralized, therefore, powers in health matters are transferred to 17 autonomous communities (Comunidades Autonomas, CCAA), as well as the competence of the cities, autonomous

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<sup>24</sup> Ministry of Health, Social Services and Equality, National Health System of Spain (2012). *See* Ministry of Health, Social Services and Equality, Mental Health Strategy of the Spanish National Health System 2009-2013 (2013).

<sup>25</sup> General Law on Health (1985). *See* Criminal Procedure Code of Ukraine, No. 4651-VI (2012). *See*, Proposal for the General Mental Health Law № 122/000158, Official Gazette of the Cortes Generales, 185-1, 1-20 (2021).

Ceuta and Melilla. The National Health Service is set up as a coordinated set of health care services from the central government administration and the CCAA that brings together all the health care functions and benefits for which government agencies are legally responsible. The General Healthcare Act<sup>26</sup> establishes coordinating mechanisms such as an inter-territorial council and recognizes the role of the National Health Service in setting goals or common minimum tasks in the field of promotion, prevention, protection, and health, as well as the general establishment of minimum, basic and general evaluation criteria of effectiveness and efficiency of programs, health centers, and services.<sup>27</sup> The National Health Strategy<sup>28</sup> was approved in a consensual manner by all the CCAAs, and a common framework was established for the improvement of mental health care and for the advances in the implementation of the community

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<sup>26</sup> General Healthcare Act (1985).

<sup>27</sup> World Health Organization (2018).

<sup>28</sup> National Health Strategy (2006).

mental health care model in an equitable way in the country.

As Holder et al. point out, the Spanish mental health system is composed of a specialized and integrative network that supports primary care, and which is made up of salaried professionals and residential and intermediate centers in the community, where there are multidisciplinary clinical teams that provide services.<sup>29</sup> In primary care, it is general practitioners who care for patients, establishing treatment or referring them to a specialized network. In recent years, some elements such as person-centered care, population-based improvements, user experience, and a look at the costs and care of the professional have been added to this model of community mental health. Progress has also been made in the development of assessment models, although a future national mental health

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<sup>29</sup> S.M. Holder, E.R. Peterson, & R. Stephens, et al., *Stigma in Mental Health at the Macro and Micro Levels: Implications for Mental Health Consumers and Professionals*, 55 COMMUNITY MENTAL HEALTH J. 369 (2019).



strategy should incorporate the participation of patients and their families.

Studying the work of the Spanish researcher Onésimo González Álvarez,<sup>30</sup> we can highlight the following fundamental provisions of the legal regulation of mental health care in Spain:

1. the principle of non-discrimination and inclusive legislation, according to which a psychiatric patient is treated as a citizen who has only a peculiar type of illness and in a legal sense is no different from other patients, except for the type of medical care he needs;
2. in development of the above principles, Spanish law does not have a specific law on psychiatric patients; and the official doctrine in the field of law and psychiatry considers the very existence of such a law to be discrimination, and ultimately, a source of stigma. At the same time, in the professional circles of lawyers and psychiatrists, this state of affairs is not considered absolutely correct, and this issue causes a lot of discussion. Their content will be discussed below; and
3. the current legal framework in Spain in relation to psychiatric patients is advanced and destigmatizing, however, law enforcement practice does not always comply with legal

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<sup>30</sup> O. Álvarez, *Mental Illness, Stigma and Legislation*, 29 REV. ASOC. ESP. NEUROPSIQ 471 (2009).

norms, and encounters resistance from a number of subjects, including medical professionals, psychiatric patients themselves, judicial and prosecutorial officials, etc. It should also be noted that the compulsory public health insurance in Spain does not cover the treatment of mental illness.

A number of Spanish researchers in their writings testify to problems in the implementation of the rights of psychiatric patients both at the level of legislation and law enforcement practice. Thus, according to Blanca Morera,<sup>31</sup> one of the problems in realizing the rights of psychiatric patients is finding a difficult balance between respecting the autonomy of patients and preventing the rejection of those patients who cannot receive the necessary help and are doomed to worsen, not always satisfy or alleviate by social, medical, and judicial structures, since the Convention on the Rights of Persons with Disabilities requires the limitation of coercive

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<sup>31</sup> B. Morera, *Problemas Médicos y Jurídicos en el Seguimiento Clínico-terapéutico del Trastorno Mental Grave*, TRASTORNO MENTAL GRAVE: PSIQUIATRÍA Y LEY 11 (2020), [https://fepsm.org/files/publicaciones/2020-Trastorno\\_Mental\\_Grave\\_\\_Psiquiatr%C3%ADa\\_y\\_Ley.pdf](https://fepsm.org/files/publicaciones/2020-Trastorno_Mental_Grave__Psiquiatr%C3%ADa_y_Ley.pdf).

measures.<sup>32</sup> In turn, Carlos Lledó<sup>33</sup> points out a number of problems in applying Spanish criminal and criminal procedure legislation to psychiatric patients. He lists the following as the main problems:

1. they are subjected to a criminal process for people without disabilities, without the slightest adaptation or support;
2. preventive measures are applied to them, even restricting freedom, of dubious constitutionality and having nothing to do with their pathology, legally excluding other possibilities with greater therapeutic effectiveness;
3. they are subjected to a trial that can hardly be called fair, in which they cannot properly carry out their defense;
4. their danger is assumed in connection with their mental illness and an act already committed, qualified as a crime, for which, however, they do not consider themselves responsible;
5. a legal consequence is imposed on them, restricting rights, even restricting freedom, even if it is called not a fine, but rather a measure of restraint;
6. such a consequence in its intensity and duration is commensurate with the fact for which he or

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<sup>32</sup> Convention on the Rights of Persons with Disabilities, UN (2006).

<sup>33</sup> C. Lledó, *Trastorno Mental Grave y Procedimiento Penal*, TRASTORNO MENTAL GRAVE: PSIQUIATRÍA Y LEY, 53 (2020), [https://fepsm.org/files/publicaciones/2020-Trastorno\\_Mental\\_Grave\\_\\_Psiquiatr%C3%ADa\\_y\\_Ley.pdf](https://fepsm.org/files/publicaciones/2020-Trastorno_Mental_Grave__Psiquiatr%C3%ADa_y_Ley.pdf).

- she are not responsible, but has nothing to do with the biography and pathology of the subject and is not even directly related to his or her possible danger;
7. this legal consequence ends within the time limit set by the verdict, regardless of their personal situation, the state of their pathology and the possible residual danger, sending the answer from that moment to the civil sphere, which, apparently, cannot now take care of such danger; and
  8. even legally, no treatment is imposed, even if it may be encouraged by criminal or penitentiary benefits.

Now in the public, medical, political, and legal circles of Spain, the issue of passing a special law on mental health care is being seriously discussed. So, according to Elena Cabrera in 2020, a number of problems of the modern psychiatric system in Spain are pushing for the adoption of this law, including: compulsory psychiatric treatment, low level of access to psychiatric care, professionalization of psychiatric diseases, and insufficient level of suicide control. Characteristically, the position criticizes the bill itself for research weakness. The Spanish Society of Psychiatry expressed its opposition to the

Psychiatric Health Bill in 2021 for a number of reasons, including:

pharmacotherapy of psychiatric diseases, as indicated in the draft, must agree with the bar association, which, in the opinion of society, violates the principle of autonomy of the patient's personality and does not meet international clinical standards;

according to society, the draft law increases the stigmatization of mentally ill people, as it calls for treating them differently from other patients, that is to say, the principle of equality is violated; experts also disagree with the conceptual approach of the legislator, based on social preconditions and sources of psychiatric diseases, like poverty, social oppression, repressions of employers, and other social problems—however, according to experts, social disadvantage is not the main cause of psychiatric diseases, as evidenced by official statistics, according to which mortality due to psychiatric diseases in the most developed countries is several times higher than in countries with less developed economies;

the community of psychiatrists also criticizes the terminology of the draft law under consideration, including the

definition of suicide proposed by the draft, which, contrary to the interpretation in the draft, cannot be a voluntary act, according to society.

In general, talking about the reform of the psychiatric service in Spain, we are talking about the organizational structure of psychiatric care with a system of dispensary observation that contributes to the unity of the biopsychosocial, polyprofessional approach at all stages of its provision, in the presence, in addition to hospitals, of a number of organizational forms of care that are created in accordance with the variety of needs and requirements of patients, but without its excessive fragmentation and segmentation.<sup>34</sup> Its development is associated with a tendency towards integration with general medicine, multidisciplinary, and a further shift to out-of-hospital, less restrictive conditions without separation of patients from their usual social environment or directly in the community, which will more facilitate their

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<sup>34</sup> “Mental Health Care Lost in the Wilds of Reform,” *Your Health* (2017), <http://www.vz.kiev.ua/ohorona-psyichnogo-zdorov-ya-zagubylasya-v-netryah-reformy/>.

autonomy and independent living. It is also important to keep in mind the need to develop links directly related to protection of mental health care.

#### IV. THE MAIN TENDENCIES IN THE DEVELOPMENT OF LEGISLATIVE SUPPORT IN THE FIELD OF MENTAL HEALTH OF THE POPULATION IN UKRAINE

According to the Constitution of Ukraine,<sup>35</sup> a person, his or her life and health, honor and dignity, inviolability, and security are recognized as the highest social value. The approval and enforcement of rights is determined by the main duty of the state.<sup>36</sup> In this regard, Article 49 of the Basic Law of Ukraine establishes the right of everyone to health care, medical care, and medical insurance, as well as state funding of relevant socio-economic, health, and preventive programs. The basic legislative act in the field of health care is the Fundamentals of

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<sup>35</sup> Constitution of Ukraine, No. 254к/96-BP (1996).

<sup>36</sup> *Id.* at Article Three.

Legislation in the Field of Health Care.<sup>37</sup> The Law of Ukraine "On Psychiatric Care" plays a key role in regulating public relations in the relevant sphere in Ukraine.<sup>38</sup>

As Mykahailo Anishchenko, et al. indicated, in Ukraine, the normative support in the field of psychiatric care is quite developed.<sup>39</sup> At the same time, mechanisms for the implementation of some laws and other legal acts relating to the protection of the rights of persons with mental disorders remain imperfect due to the incompleteness of a number of basic and interrelated reforms in the state, in particular, reforms in the field of decentralization, local self-government, and healthcare. At the same time, Ukraine is actively moving along the path of improving state policy in this area. Thus, the

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<sup>37</sup> Fundamentals of Legislation in the Field of Health Care (1992). Fundamentals of Ukrainian legislation on healthcare, No. 2801-XII (1992).

<sup>38</sup> Law of Ukraine, "On Psychiatric Care," No. 1489-III (2000) <https://zakon.rada.gov.ua/laws/show/1489-14>.

<sup>39</sup> M. Anishchenko, L. Hamburh, O. Krasnokutskyi, V. Glazunov, & P. Davidov, *Legal Regulation of Providing Psychiatric Care in Ukraine: Problems and Prospects*, 23 J. L. & SOC. DEVIANCE 77 (2022), <http://www.lsd-journal.net/archives/Volume23/UkrainePsychiatricCare.pdf>.



Government approved and is currently implementing the National Action Plan for the implementation of the Convention on the Rights of Persons with Disabilities for the period until 2025, approved by the Cabinet of Ministers of Ukraine No. 285-r, and the State Policy Strategy on Healthy and Active Longevity of the Population for the period up to 2022, approved by the Order of the Cabinet of Ministers of Ukraine No. 10-r.<sup>40</sup>

The statistical information contained in the Concept for the development of mental health care in Ukraine for the period up to 2030, approved by the Order of the Cabinet of Ministers of Ukraine,<sup>41</sup> indicates that as of January 1, 2017, 1,673,328

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<sup>40</sup> Cabinet of Ministers of Ukraine, National Action Plan, "On approval of the National Action Plan for the Implementation of the Convention on the Rights of Persons with Disabilities for the Period Until 2025," No. 285-r, Convention on the Rights of Persons with Disabilities, 2025 (2021); State Policy Strategy on Healthy and Active Longevity of the Population, 2022, Order of the Cabinet of Ministers of Ukraine No. 10-r (2018). Order of the Cabinet of Ministers of Ukraine, "On the approval of the State Policy Strategy on Healthy and Active Longevity of the Population for the Period Until 2022," No. 10-p (2018).

<sup>41</sup> Decree of the Cabinet of Ministers of Ukraine, No. 1018-p. (2017). Concept for the Development of Mental Health Care in Ukraine for the Period up to 2030, <http://zakon2.rada.gov.ua/laws/show/1018-2017-%D1%80>.

residents of Ukraine were registered in connection with mental and behavioral disorders, about four percent of the population, and in general, WHO<sup>42</sup> estimates that about 8 million people with mental disorders live in Ukraine (about 20% of the population). According to the Ukrainian Helsinki Human Rights Union,<sup>43</sup> the most vulnerable group remained incapacitated persons and persons whose legal capacity was restricted by a court order. At the same time, almost nine percent of people with mental health disorders were not identified with a disability, so they did not have access to an appropriate level of services. It was necessary to activate guardianship authorities in ensuring access of incapacitated persons to services related to disability. Many incapacitated persons and persons with limited civil capacity were appointed guardians and custodians, of

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<sup>42</sup> World Health Organization (WHO) Ukraine, "Today is World Mental Health Day!" Official Facebook Page of the World Health Organization Ukraine (2020), <https://www.facebook.com/WHOUkraine/posts/3356133217836679> (Accessed August 10, 2022).

<sup>43</sup> V. Lebed & B. Moisa, Rights of Persons with Mental Health Problems, Official Site of the Ukrainian Helsinki Human Rights Union (2017), <https://helsinki.org.ua/prava-osib-iz-problemamy-psychnoho-zdorov-ya-2017/>.

which 95.5% are related to the wards. The rest, for whom guardians and custodians were not appointed, were assigned guardianship by social protection institutions in the sphere of administration of the Ministry of Social Policy of Ukraine.

Therefore, in 2017, the Verkhovna Rada of Ukraine adopted a number of important bills called to improve the situation with ensuring the rights of people with mental health disorders.<sup>44</sup> Most legislative innovations are aimed at expanding the rights of incapacitated persons, changing the procedure for depriving a person of legal capacity, the mechanisms for involuntary hospitalization and compulsory examination of persons with mental disorders, as well as changing the criminal procedural legislation governing the use of compulsory medical measures. The amendments made to the Civil Procedure Code of Ukraine are intended to improve access to justice for this category of citizens.<sup>45</sup> Article 300 of Civil Procedure

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<sup>44</sup> Verkhovna Rada of Ukraine (2014, 2016-2017).

<sup>45</sup> Civil Procedure Code of Ukraine (2004).

Code of Ukraine, has determined that an application for reconsideration of a decision on declaring a person incapacitated can be filed by this person himself or herself.<sup>46</sup> According to part six of Article 300 of the Civil Procedure Code of Ukraine, the decision to restrict civil capacity or deprivation of legal capacity is now limited to two years, which provides additional protection for the legitimate interests of incapacitated or partially incapacitated persons.<sup>47</sup> However, these changes cannot be considered complete, since the legislator has not made appropriate changes to Article 42 of the Civil Code of Ukraine, which also regulates the procedure for the renewal of legal capacity.<sup>48</sup> It turns out that there is a conflict in the legislation because the Civil Code of Ukraine states that the restoration of civil capacity occurs only at the request of the guardian or guardianship authority.<sup>49</sup>

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<sup>46</sup> Article 300, Civil Procedure Code of Ukraine (2004).

<sup>47</sup> Article 300, part six, Civil Procedure Code (2004).

<sup>48</sup> Article 42, Civil Code of Ukraine (2004).

<sup>49</sup> Civil Code of Ukraine (2003). *See also* Civil Code of Ukraine No. 435-IV (2003) and Civil Procedure Code of Ukraine No. 1618-IV (2004).

The provisions of Article 299 of the Civil Procedure Code of Ukraine<sup>50</sup> on the participation of a person in respect of whom a decision is made to recognize him or her as incapacitated or limit his or her legal capacity, in court, seem to be positive.<sup>51</sup> It is possible to participate via videoconference if a person is in a psychiatric institution. The participation of a person in a court session hearing his or her opinion is one of the fundamental conditions for access to justice for people with mental health problems. However, the legislator decided that not in all matters relating to incapacitated persons and persons whose legal capacity is limited, their opinion is important. In particular, consideration of the opinion of a person is not provided for when considering cases on the appointment of a guardian or custodian. It should be noted that the Parliament of Ukraine is currently

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<sup>50</sup> Article 299, Civil Procedure Code of Ukraine (2004).

<sup>51</sup> Draft Law on Amendments to Certain Legislative Acts of Ukraine, On the regulation of legislation in the field of application of measures to a person in respect of whom the application of compulsory medical measures is envisaged or the issue of their application was decided, No. 1242 (2014).

considering a draft law<sup>52</sup> aimed at strengthening the protection of the rights of persons declared legally incompetent by the court. The draft act proposes to amend the Civil Code of Ukraine and the Civil Procedure Code of Ukraine to grant persons recognized as legally incompetent the right to independently apply to the court for the dismissal of a guardian appointed by it and granting such a right to family members of legally incompetent persons.<sup>53</sup>

At the same time, the intervention of the guardian in other areas of the life of an incapacitated person has been reduced, namely, the provision on the sterilization of incapacitated persons with the consent of the guardian has been excluded,<sup>54</sup> Article 49 of the Fundamentals of Ukrainian Legislation on

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<sup>52</sup> Draft Law on Amendments to the Civil Code of Ukraine and the Civil Procedure Code of Ukraine on Strengthening the Protection of the Rights of Persons Recognized by the Court as Incapacitated (2021),

[http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=73512](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=73512).

Draft Law on Amendments to Certain Legislative Acts of Ukraine on the Provision of Psychiatric Care No. 4449 (2016). Draft Law on Amendments to the Economic Procedure Code of Ukraine, the Civil Procedure Code of Ukraine, the Code of Administrative Procedure of Ukraine and other legislative acts No. 6232 (2017).

<sup>53</sup> *Id.*

<sup>54</sup> Article 281, Civil Code of Ukraine (2003).

Healthcare,<sup>55</sup> which was aimed to strengthen the protection of the rights of incapacitated persons. However, the risk of the guardian making decisions that may not necessarily be supported by an incapacitated person remains in accordance with Article 43 of the Fundamentals of Ukrainian Legislation on Healthcare,<sup>56</sup> according to which medical intervention in respect of an incapacitated person is carried out at the request of a guardian.

The issue of ensuring the right to protection of persons under guardianship also remains unresolved, since the law has not provided yet for independent obtaining of free legal assistance by such persons. According to part three of Article 18 of the Law of Ukraine “On free legal aid,”<sup>57</sup> such assistance can be provided solely on the basis of an application from a guardian or custodian. This provision significantly complicates or even makes it impossible for

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<sup>55</sup> Article 49, Fundamentals of Ukrainian Legislation on Healthcare (1992).

<sup>56</sup> Article 43, Fundamentals of Ukrainian Legislation on Healthcare (1992).

<sup>57</sup> Part three, Article 18, Law of Ukraine "On free legal aid" (2011). Law of Ukraine “On Free Legal Aid” No. 3460-VI (2011).

incapacitated persons to access justice, in particular in matters of restoring civil capacity.

For a long time, one of the problems of Ukrainian legislation was discrimination against incapacitated persons in terms of depriving them of the right to appeal. According to Article Eight of the Law of Ukraine "On Citizens' Appeals"<sup>58</sup> appeals of incapacitated persons are not subject to consideration, such an appeal can only be filed by legal representatives. The Commissioner of the Verkhovna Rada of Ukraine for Human Rights<sup>59</sup> prepared an appropriate constitutional submission on the recognition of such provisions as unconstitutional.<sup>60</sup> According to the Decision of the

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<sup>58</sup> Law of Ukraine "On Citizens' Appeals," No. 393/96-BP (1996), <https://zakon.rada.gov.ua/laws/show/393/96-%D0%B2%D1%80>. Decision of the Constitutional Court of Ukraine in the case based on the constitutional submission of the Human Rights Commissioner of the Verkhovna Rada of Ukraine regarding the compliance with the Constitution of Ukraine (constitutionality) of certain provisions of the second part of Article 8, the second sentence of the fourth part of Article 16 of the Law of Ukraine "On Appeals of Citizens" (case of appeals by persons recognized incapacitated by the court) No. 8/2018 (2018), available at <https://zakon.rada.gov.ua/laws/show/v008p710-18>.

<sup>59</sup> Commissioner of the Verkhovna Rada of Ukraine for Human Rights (2017).

<sup>60</sup> See Constitutional submission of the Commissioner of the Verkhovna Rada for Human Rights No. 1-2553 (2017).



Constitutional Court No. 8-r/2018,<sup>61</sup> the provisions of the second part of Article Eight, which does not consider "the appeal of persons recognized by the court as incapacitated," was recognized as inconsistent with the Constitution of Ukraine, being unconstitutional, which was a significant step towards changing the legal paradigm in matters of ensuring the rights of incapacitated persons.<sup>62</sup>

Amendments to the Law of Ukraine "On Psychiatric Care" revised the procedure for hospitalization of incapacitated persons. According to the decision of the Constitutional Court of Ukraine,<sup>63</sup> the procedure for hospitalization of an incapacitated person with the consent of the guardian was declared unconstitutional. Since then, the issue of hospitalization of an incapacitated person was decided on the basis of a court decision. In accordance with the amendments to Article 13 of the

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<sup>61</sup> Decision of the Constitutional Court, No. 8-r/2018 (2018).

<sup>62</sup> *Id.*

<sup>63</sup> Decision of the Constitutional Court of Ukraine on Case, No. 1-1/2016 (2016), <http://zakon3.rada.gov.ua/laws/show/v002p710-16>.

Law of Ukraine “On Psychiatric Care,”<sup>64</sup> an incapacitated person may be hospitalized with his or her consent, or if it is impossible to obtain such consent, by decision of the guardianship authority, which is taken no later than 24 hours from the moment the legal representative applies to this authority of a said person and may be challenged in court. However, the establishment of control over the hospitalization of incapacitated persons seems to be more nominal than practical due to the low efficiency of guardianship authorities. Therefore, their decisions will be more as formal character, which is indirectly evidenced by the data on the number of incapacitated persons deprived of services related to disability. The Constitutional Court also undertook to solve this problem, which, by its Decision No. 13-r/2018,<sup>65</sup> recognized the norm that is inconsistent with the Constitution, that a person recognized in the

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<sup>64</sup> See Decision of the Constitutional Court of Ukraine, Commissioner of the Verkhovna Rada of Ukraine on Human Rights, Constitution of Ukraine, sixth sentence, first part, Article 13, Law of Ukraine "On Psychiatric Assistance," No. 13-r/2018 (2018), <https://zakon.rada.gov.ua/laws/show/v013p710-18#n37>.

<sup>65</sup> *Id.*

manner prescribed by law as legally incompetent, who, due to his or her health, is not able to make a request or provide an informed written consent, is hospitalized in an institution for the provision of psychiatric care by decision (consent) of the guardianship authority.

The same Law<sup>66</sup> provides for the need to obtain the consent of a person with mental disorders in cases of providing mental health services, for example, to decide on the application of treatment, conducting a psychiatric examination, providing outpatient care, hospitalization in a psychiatric hospital, and placement in social protection institutions. If such a person is unable to make a request or provide informed written consent, then consent may be provided by the guardian, who in turn must inform the guardianship authorities.

In order to determine whether or not a person has a mental disorder (a mental disorder recognized as such in accordance with the International Statistical Classification of Diseases, Injuries and Causes of

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<sup>66</sup> Law of Ukraine, “On Psychiatric Care” (2000).

Death), the need is to provide him or her with psychiatric care, as well as to resolve the issue of the type of such assistance and the procedure for it providing a psychiatric examination. In accordance with part four of Article Seven, part two of Article 11 of the Law of Ukraine “On Psychiatric Care”<sup>67</sup> in relation to a person subject to examination who has reached the age of 14, his or her informed written consent or request is required. Examination of a person under the age of 14 years (minor) requires such consent or a request from the parents or other legal representative. If a person recognized as incapacitated, due to his or her state of health, is not able to make a request or give informed consent, then this should be done by his or her legal representative.

In case of disagreement of one of the parents or in the absence of parents, a psychiatric examination of a person under the age of 14 years (a minor) is carried out by decision (consent) of the guardianship authority, which is accepted no later than 24 hours from the moment the other legal representative of the

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<sup>67</sup> *Id.*

specified person applies to this authority and may be appealed in accordance with the law, including to court. The legal representative of a person recognized as incapacitated in accordance with the procedure established by law shall notify the guardianship authority at the place of residence of the ward of the granting of his consent to conduct a psychiatric examination of the ward not later than the day following the day of granting such consent. No court fee is charged for submitting an application for the provision of compulsory psychiatric assistance to a person.<sup>68</sup> The list of documents required to apply to the court includes:

1. An application for a psychiatric examination; provision of outpatient psychiatric care, its extension on a compulsory basis; hospitalization of a person in a psychiatric institution, its extension, which indicates the grounds for the provision of psychiatric care on a compulsory basis;
2. The conclusion of a psychiatrist, in the case of an application for a psychiatric examination or the provision of outpatient psychiatric care; and

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<sup>68</sup> Law of Ukraine “On Court Fees,” No. 3674-VI (2011), <https://zakon.rada.gov.ua/laws/show/3674-17>.

3. The conclusion of the commission of psychiatrists, in the case of an application for the extension of outpatient psychiatric care, for involuntary hospitalization, its extension.

Persons to whom compulsory medical measures have been applied are in the amendments put into effect on June 10, 2018 to Article 19 of the Law of Ukraine “On Psychiatric Care”<sup>69</sup> and Article 95 of the Criminal Code of Ukraine.<sup>70</sup> Article 514 of the Criminal Procedure Code of Ukraine<sup>71</sup> provides guarantees of access to alternative forensic psychiatric examination and the right to apply to the court to change or terminate the application of compulsory medical measures. In addition, now the administration of the institution in which the person is located must ensure an unimpeded possibility of examination of the person by an independent psychiatrist chosen by him or her on the territory of the institution for the provision of psychiatric care or penitentiary institution, respectively. Amendments

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<sup>69</sup> Law of Ukraine, “On Psychiatric Care” (2000).

<sup>70</sup> Article 95 of the Criminal Code of Ukraine (2001). *See* Criminal Code of Ukraine No. 2341-III (2001).

<sup>71</sup> Article 514 of the Criminal Procedure Code of Ukraine (2013).

have also been made to the Criminal Procedure Code of Ukraine: the procedural rights of persons with mental disorders in criminal proceedings are protected<sup>72</sup> and the mandatory participation of a person against whom coercive medical measures are expected to be taken in a court session is guaranteed.<sup>73</sup>

The tendency towards improving mental health services is conditioned due to the Concept for the Development of Mental Health for the Period up to 2030<sup>74</sup> approved by the Cabinet of Ministers of Ukraine. In order to solve problems in this area, the said Concept provides for the need to bring national legislation in line with the requirements of international human rights documents and implement programs to support the employment of persons with mental and intellectual disabilities, their social integration, education, involvement of patients and their families, as well as public organizations that protect the rights of patients, for the planning and

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<sup>72</sup> Article 506 of the Criminal Procedure Code of Ukraine.

<sup>73</sup> Article 512 of the Criminal Procedure Code of Ukraine (2013).

<sup>74</sup> Decree of the Cabinet of Ministers of Ukraine, No. 1018-p. (2017).

implementation of programs in the field of mental health, the introduction of an effective mechanism for monitoring the observance of human rights when providing assistance to people with mental health problems, and a mechanism for holding accountable for actions that have signs of discrimination based on mental health. The Concept also focuses on the need to counter stigma and overcome the social exclusion of persons with mental and intellectual disabilities by including such persons in social communities, supporting their residence at the level of the territorial community, social support during employment, and improving the system for providing rehabilitation and social services. Achieving such progressive goals is possible only if the directions of its implementation are filled with specific content and the necessary financial resources. At the same time, long-term solutions in the field of mental health must be coordinated with reforms in other areas, in particular with decentralization, in the course of the overall health care reform.



Mental health professionals are concerned about the lack of attention to this link in health care reform. Experts note that the reduction of beds in inpatient health care facilities that treat and rehabilitate people with mental disorders, without the development of its outpatient forms, will not contribute to effective services. In addition, serious challenges for people with mental health problems can arise when interacting with family doctors at the primary level, in particular, in protecting confidential information about the patient's mental health status.

The actions of the Ministry of Health of Ukraine on the development and “approval of new Rules for the application of compulsory medical measures in a special institution for the provision of psychiatric care”<sup>75</sup> deserve a positive assessment. The aforementioned legal act defines the rights and obligations of persons subject to compulsory medical measures, provides for the development of individual

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<sup>75</sup> Order of the Ministry of Health of Ukraine, "On approval of the Rules for the application of compulsory medical measures in a special institution for the provision of psychiatric care," No. 992, (2017), <http://zakon2.rada.gov.ua/laws/show/z1408-17>.

plans for the social and psychological rehabilitation of patients, and regulates the social and living conditions for patients in institutions for the provision of psychiatric care. For 2021, the National Health Service of Ukraine (NHSU)<sup>76</sup> has concluded agreements with all institutions that meet the requirements and paid for the services provided in accordance with the signed agreement. Therefore, all patients in need of psychiatric care were able to receive it. On the basis of the psychiatric care package, the NHSU has entered into contracts with 198 medical institutions. To date, 114 multidisciplinary hospitals throughout the country provide psychiatric care under contract with the NHSU. Another 64 are single-profile psychiatric institutions, 20 are narcological institutions. In this

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<sup>76</sup> National Health Service of Ukraine, “In 2021, under the program of medical guarantees, psychiatric care will also be provided by mobile multidisciplinary teams” (2020), <https://www.kmu.gov.ua/news/u-2021-roci-za-programoyu-medichnih-garantij-psihiatrichnu-dopomogu-nadavatimut-i-mobilni-multidisciplinarni-komandi>. National Health Service of Ukraine, “Psychiatric care: what will change in 2021. The introduction of the new care package by the mobile teams will bring mental health care closer to the patient, as they can receive it at home (2021), <https://nszu.gov.ua/novini/psihiatrichna-dopomoga-shcho-zminitsya-u-2021-roci-466>.

direction, since the beginning of April, medical institutions have received one billion 324 million UAH.<sup>77</sup>

Psychiatric care in multidisciplinary establishments contributes to reducing the stigmatization of patients. People will be less embarrassed to go to such hospitals for help, they will not be forced to ride, for example, to the regional center, but will be able to go to the nearest multidisciplinary clinic. The transition from treating patients in single-profile hospitals to providing assistance in multidisciplinary medical institutions is not an innovation of the NHSU, but a world practice. In Ukraine, such a strategy is enshrined in the Concept for the Development of Mental Health in Ukraine for the period up to 2030.<sup>78</sup>

In December 2018, the Order of the Ministry of Health of Ukraine<sup>79</sup> came into force that

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<sup>77</sup> Ukrainian Hryvnia (UAH), currency of the Ukraine.

<sup>78</sup> Decree of the Cabinet of Ministers of Ukraine, No. 1018-p. (2017).

<sup>79</sup> Order of the Ministry of Health of Ukraine, "On approval of the scope of provision of secondary (specialized) medical care, which must be provided by multidisciplinary intensive care hospitals of the first and second level, and amendments to the procedure for

multidisciplinary hospitals can provide inpatient care in the specialty "psychiatry." The actions of the NHSU are aimed at improving the quality and accessibility of mental health services. They concern not only the medical, but also the social and moral component. NHSU pays only for medical care. It is important for the patient to know that under the program of medical guarantees he can receive psychiatric care both in the hospital and on an outpatient basis free of charge. To do this, one needs to contact an institution that has an agreement with the NHSU for psychiatric care. A suitable package includes both diagnostics and treatment, as well as medicines from the National List. Separately, in the institution, the patient must be provided with medicines that are purchased centrally for budget money. A patient can go to a psychiatrist without a referral. Such a service for him or her will be equally gratuitous. The hospital will be paid for by the NHSU. If the patient has a referral from a primary

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regionalization of perinatal care," N 1292/32744 (2018),  
<https://zakon.rada.gov.ua/laws/show/z1292-18>.

care physician or other specialist, the patient chooses an establishment that has a contract with the NHSU for psychiatric or outpatient care and a psychiatrist in the state. The place of registration or residence does not matter when choosing a hospital. A patient who is brought by an ambulance or who applies himself or herself in an emergency also receives assistance free of charge—regardless of whether he or she has a health care declaration. A referral in emergency is not required.

Since July 2021, a new package has been introduced “Psychiatric care provided by mobile multidisciplinary teams.”<sup>80</sup> Such a service will help bring mental health care closer to the patient, because he or she will be able to receive it at home. After an acute course of the disease, patients can continue treatment on an outpatient basis. If necessary, a mobile multidisciplinary team will go to the patient

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<sup>80</sup> National Health Service of Ukraine (2020), <https://www.kmu.gov.ua/news/u-2021-roci-za-programoyu-medichnih-garantij-psihiatrichnu-dopomogu-nadavatimut-i-mobilni-multidisciplinarni-komandi>. National Health Service of Ukraine (2021), <https://nszu.gov.ua/novini/psihiatrichna-dopomoga-shcho-zminitsya-u-2021-roci-466>.

and provide assistance at the location. P. Castrillo, R. Guijarro, and M. Cerviño<sup>81</sup> indicate that not only the therapeutic relationship between the patient and psychiatry is important, but also the joint approach of various specialists. The aim is to emphasize the importance of comprehensive treatment. This means sharing therapeutic goals among different specialists. Multidisciplinary is a general trend of modern psychiatry, which is gradually becoming part of the Ukrainian model. The demand for this model in Ukraine is due to the unfavorable general social, moral climate.<sup>82</sup> As the Minister of Health of Ukraine Viktor Lyashko noted, previous studies and the bitter experience of other countries affected by armed conflicts show that at least one in five people will have negative consequences for mental health, and one in ten will experience these consequences at the level of moderate or severe illness.

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<sup>81</sup> P. Castrillo, R. Guijarro, & , M. Cerviño, *Multidisciplinary Approach to Several Mental Disorders: Clinical Case*, 41 EUROPEAN PSYCHIATRY S712 (2017).

<sup>82</sup> Press Service of the Cherkasy Regional State Administration, “The Impact of War on Mental Health is Enormous” (2022), <https://ck-oda.gov.ua/novyny-cherkaskoyi-oblasti/vpliv-vijni-na-psixichne-zdorovya-kolosalnij/>.

## V. CONCLUSION

Thus, the modern organization of psychiatric care is a system/type of specialized medical care, the knowledge and experience of which have gone far beyond the general medical and clinical problems of psychiatry, and cover a wide range of organizational and social issues. However, in the last two decades, a number of serious problems have been identified in the field of psychiatry and the system of organization of mental health care. One of the priorities should be the development and implementation of programs to increase the population's tolerance for the mentally ill, to reduce the stigmatization of this category of patients. Over the past decades, there has been an increasingly clear tendency towards the integration of psychiatry with other medical disciplines (multidisciplinarity), the development of specialized types of psychiatric care. A distinctive feature of the system of psychiatric care of the last decade is the emergence of its fifth link—public (social) psychiatry. At the same time, the development of legal policy in the field of ensuring the right of

citizens to psychiatric care should follow the path of finding a balance between the principle of inclusion, preventing stigma, and ensuring public safety with unconditional and absolute respect for human rights and freedoms and ensuring appropriate guarantees.