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THE RIGHT TO MENTAL HEALTH IN INTERNATIONAL AND NATIONAL LEGISLATION: INITIATIVES CHALLENGING THE DOMINANT BIOMEDICAL PERSPECTIVE

This paper provides an exploratory overview of the evolving international and national legislative initiatives related to the right to mental health. While there is a growing recognition of the need to shift away from the dominant biomedical paradigm, existing systems persistently fall short of delivering mental care and support that aligns with higher human rights standards. Through the examination of international policy initiatives and analysis of national-level protection measures and actors, this study contextualises current trends in mental health care regulations. Case studies of selected awareness raising campaigns – deemed examples of good practice – offer insights into the strategic approaches employed by various stakeholders to promote mental health rights. Additionally, we provide a preliminary analysis of these campaigns, highlighting their role in shaping the current public practices and understandings of mental health. The conclusion juxtaposes the established international policy initiatives with practices in the form of awareness-raising campaigns on the international and national levels, while providing an initial assessment of the capacity of the existing legislative bodies and institutions to follow the trends related to the right to mental health.

Keywords: *mental health, international legislation, empowerment, policy analysis, resilience, destigmatization.*

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1. Introduction

The improvement of mental health care systems and raising the awareness surrounding the issue are becoming increasingly debated topics, gaining growing attention globally and nationally. The messages highlighting the importance of mental health awareness surround us, leaving the impression that in practice, there is an opportunity to exercise this right easily available and that the environment is supportive and not stigmatising towards people with difficulties. The unstable and stressful life under constant change and pressure, however, increasingly threatens the capacities of individuals to cope, while putting them at a constant risk of falling into the condition described as "mental illness", "mental disorders", "mental health problems" and "mental health conditions". Starting from this assumption, we might expect that legislation and practice in the domain of mental health protection and support followed suit in reaction to these trends and consequently had modernised and improved their treatments. However, if we scratch the surface and counterpose the normative and practical frameworks surrounding the right to mental health, we might get a different picture.

Therefore, in this preliminary and explorative research, we seek to demonstrate how the right to mental health is changing in international and national legislation, but also detect the practical activities that follow these initiatives and call for their implementation in the form of mental health awareness raising campaigns and their estimated impact and results. Which policy measures were undertaken internationally and nationally to change and enhance the legislative framework of mental health system practices that the international organisations started to increasingly criticise for relying on coercive and biomedical approaches, in the era that many would describe as the era of human rights? Are these measures sufficient to open the space for innovative institutional mechanisms, activities and social relations that are grounded in respecting the dignity and free will of the people in mental health conditions? We open the direction of research with these questions, calling for the explorative examinations with the broader goal of building the foundations for future research on the advancement of mental health support policies, practices and strategies to meet the needs of individuals in specific life situations and/or occupying specific professions (for example, prison and elderly population, but also academic labourers: Milićević 2023, Petkovska 2023).

The first narrowing down of this preliminary explorative examination comes with the need to make not always so easy traceable distinction between what we conditionally might name as the right to protect our mental health within critical but still in general functional life conditions on the one side, and improving the social life and mental care protection system for people who have been previously diagnosed with mental health

disease – our focus here is on the first category. One of the biggest critiques of the existing legislation and practice safeguarding the mental health system is that it does not act preventively when there are still chances for a complete recovery, but is rather oriented towards diagnosing and maintaining the diagnosed individuals within the isolated mental healthcare system. This is already the phase of condition when the chances for deeper recovery are not optimistic but rather relatively small (Doyle et al., 2023). Therefore, we aim to give an overview of how the image of the mental health system has been shaped by the initiatives of the international actors and actions of the various institutions engaged with changing the perspective of how societies are dealing with the topic and practice of mental health. In other words, what strikes our attention is to analyse whether the mental health support system is changing and whether there is space to notice these transformative moves are heading towards more community, human rights-oriented mental health care and support system in practice?

The approach advocated by the international organisations, above all WHO and the UN, is the one that stops using the terminology grounded in deficiency and disability but rather is oriented towards building the general and mental health resilience through empowerment, where the positive aspects of personality are highlighted and human rights are respected. The resilience grounded in empowerment and its importance for human rights has been poignant to many researchers (Cadell et al., 2001; Muia & Phillips, 2023). Some of them speak particularly about these concepts in connection with the prevention of mental health conditions in the context of providing a healthy environment for the individuals experiencing crises or burnouts that challenge their coping capacities (Weitzel et al., 2022). Since the main typology of prevention of mental health is the one separating the personal from the professional sphere, in our approach, we assume that the aspect of community support connecting the two is crucial; therefore, the mental health awareness of the surrounding environment of the individuals might, to a great degree, influence the resilience and the positive prognosis of the critical phases instead of leading to diagnosis and reinforced reliance of mental health institutions using the coercive and isolating measures. This approach, in other words, is not exclusively oriented towards the criteria of capacity but rather towards the assessment of needs for support and empowerment that might happen without negating the ability and capacity of the person in crisis. The concept of neurodiversity provides us with a broader spectrum to judge someone's ability and capacity to deal with the challenges of life, and might to a great extent be used to

describe the shifting tendencies in the domain of mental health legislation and public representation and the presence of mental health issues in media in the direction following the ideas presented in this paper (Chapman, 2023).[1]

Speaking from an international perspective, the mode of implementing change regarding the specific social or political domain's legislation has the most common, top-down direction and implies the guided intervention based on two basic steps. The usual first move of the international bodies intending to introduce change or reform in some domain of the system starts with designing the prescriptive documents that, via soft power mechanisms, bind the national states through the undertaken obligations dictated by the international treaties. After gathering the critical number of states into the initiative, the second step consists of adopting the consequent legal policy frameworks through which the measures will be implemented in concrete institutional practices of the countries in question. Translating the resilience empowerment model into the modifications of the national legislative frameworks previously grounded in substitutive decision making and coercion would, in particular, entail the following three steps: improving access to community mental health services, reducing stigma and discrimination and promoting the active participation of persons with lived experience in law reform processes and the design of policy responses (WHO & UN 2023: vii). The international institutions advocate the following steps to be implemented to a greater extent within the domain of mental health care systems: equality, non-discrimination, supported decision-making, free and informed consent, effective and meaningful participation and community inclusion (Batrićević, 2019).

Following the guidance for policy modifications led by international organisations, various actors are facilitating their implementation of the new measures by promoting campaigns spreading the normative and policy principles into practice at both institutional and individual levels. Our preliminary analysis aims to determine whether these campaigns primarily focus on pointing out the problem to raise awareness, or if they also provide instructions regarding the resources and means of accessing the support in case of need. The methodology used in this paper is policy analysis, examining the advocacy and implementation of change within the dominant policy approach to mental health support and care systems. This analysis is followed by a brief analysis of the case studies of the mental health awareness rising campaigns.

[1] "The diversity in 'neurodiversity' comes from two sources. The first was the shift towards celebrating other forms of human diversity – cultural, sexual, and so forth – that arose following the major civil rights and pride movements of the twentieth century. Alongside these, early neurodiversity proponents began to ask whether neurological divergence could similarly be celebrated and be a locus of pride rather than being seen as an inherently tragic deviation "(Chapman, 2023: 130).

2. The recognition of the right to supportive mental health care within international and national legislation

Although in general, the right to mental health is a recognised human right, a widely accepted assumption that mental health care service is easy to exercise in practice under conditions that satisfy not only decent, but also empowering and emancipatory levels, might be contested. Theoretically and declaratively speaking, the right to mental health is normatively derived from the right to health and well-being addressed in the Universal Declaration of Human Rights (UDHR). The article 25(1) of UDHR refers to 'health and well-being': "Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care and necessary social services, and the right to security in case of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control".[2] Despite not addressing the notion of mental health directly here, we cannot assume any sort of general health without also including the best level of mental health care and support possible.[3] In 1966, however, the human rights as given in the UDHR were divided into two separate groups of rights or covenants: the *International Covenant on Civil and Political Rights* (United Nations, 1966a) and *the International Covenant on Economic, Social and Cultural Rights* (United Nations, 1966b).[4] This development regarding the reorganisation of human rights helped the more precise definition and recognition of all of them, so the right to mental health was now directly addressed as part of *the International Covenant on Economic, Social and Cultural Rights* (ICESCR) under Article 12.[5] These treaties were later translated into many individual human rights regulations of a lower degree, many of which are relevant to the application of the right to mental health into the national legislative systems. Most of the countries of the world that are UN member states have ratified one or more treaties and thus became obligated to respect, protect and fulfil the rights under the specific treaties that they have

[2] United Nations General Assembly, 1948, art. 25(1).

[3] Therefore, many of the highlights put on general health by the specific institutions such as, for example, World Health Organisation, recognises the universal aspect of the ability to enjoy health related human rights in general: "The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition" (World Health Organization, 2020; p. 1). This general right to health is a roof out of which the more specific right to mental health might be derived.

[4] The United Nations (1966a), the *International Covenant on Civil and Political Rights*, and the United Nations (1966b), *the International Covenant on Economic, Social and Cultural Rights*.

[5] United Nations (General Assembly). (1966). International Covenant on Economic, Social and Cultural Rights. Treaty Series, 993, 3, article 12.

ratified, further elaborated in other regional and national regulations (WHO & OHCHR, 2023: 125).

Among the organisations whose contribution to the international recognition of mental health as a fundamental human right is particularly important, we should highlight the World Health Organisation (WHO) and the United Nations (UN). One of the reasons they are first to be pointed to as international actors that deal with reframing the legislative framework surrounding mental health and positioning it as a right is the publication they jointly issued in 2023, *Mental health, human rights and legislation: Guidance and practice,* which is the most important document for the case of modernising the mental health support systems in direction of respecting the right to mental health in the context of also greater respect of human rights in general existing in the moment. In contrast to the model of mental health protection previously existing in most countries, WHO and UN advocate a reform and modernisation of the mental health systems under the banner of what they have named as "a human rights approach to mental health". In most general terms, human rights approach to mental health could be observed in the context of and as if it refers to the efforts from the side of scholars, professionals and other relevant actors to move the mental health care system forward in the direction of community support to the people in need, empowerment and resilience motivated care in the struggle "for a significant shift from biomedical approaches towards a support paradigm that promotes personhood, autonomy, and community inclusion" (WHO & OHCHR 2023: xvi). This is all in opposition to the biomedical model that is considered outdated and in need of reform.

The biomedical model and the effect of medication on the mental health of patients are one of the most controversial and important topics whose outcomes are directly impacting all sorts of issues surrounding the right to mental health. For a long period, most mental health support systems have been framed within this approach. The biomedical approach to mental health highlights the diagnosis of the mental condition, prescribing the medication that is supposed to reduce the symptoms, and coercion and admission to closed institutions during periods of distress and instability. Whether the stronger targeted support to individuals whose mental condition is challenged might prevent the appearance and persistence of the symptoms of deteriorated mental health condition (and to what extent) is one of the most controversial issues for psychiatry, since, besides the declarative statements on the importance of prevention, we do not often find much evidence that this type of support provision is accessible and available to people in need. On the one hand we still have the authors who claim the good effect of the medications are irreplaceable and conclude that based on the indicators such as the decrease of the number of deaths of people taking medication compared to those who do not, saying not much about the side-effects and other disadvantages of the medication and bad impact on the life of

the individuals (Kelly, 2023: 389). Rather than just proposing the adoption of mental health-related laws that stand alone, the solution that WHO and the UN aim for is based on the principle of integration of mental health-related issues into the already existing legislative framework with different sort of solutions putting an accent on addressing the social and community factors that affect mental health and aim to observe the prevention and support system for mental health as embedded in them.

The change in approach towards mental health, as outlined in the legislation that WHO and OHCHR seek to promote, in other words, is to minimise the coercion of mental health service measures based on the denial of an individual's legal capacities and on forced medication, which is understood as undermining their dignity and rights. Denial of the legal capacities of the individual is the opposite of what reform the international organisations advocate for is grounded in, which is the empowerment and building resilience through community measures that does not, like biomedical model, obstruct a couple of the important legal principles such as equal recognition before the law, right to be protected under the law, right to liberty and security, right to health and right to life in general (Pavlović & Stevanović, 2024; UN & WHO 2008: 1). Furthermore, the community approaches based on empowerment and building resilience in general aim to decentralise and challenge mental health practices by adopting new policies and practices.[6]

In Serbia, the situation has significantly changed in 2021, when the Movement for Mental Health (MMH), unifying several smaller previous initiatives, was founded. The MMH started to advocate policy solutions that improve the mental health rights and pursue the initiatives aimed at raising public awareness, such as the Belgrade Mental Health Festival, part of the International Mental Health Day and Suicide Prevention Week. The MMH issues a yearly *Report on the realization of the right to mental health in Serbia – Analysis of the fulfilment of the Program on mental health protection of Serbia*, with special reference to the indicators from *the Action Plan (2019-2022)* for the implementation of *the Program on mental health protection in the Republic of Serbia (2019-2026)* as a crucial relevant national policy document. The annual report issued by MMH is a valuable overview of the state of the art in public policy regarding the mental health legislation reform and innovation in Serbia.

The mission of the MMH is to work on the improvement of the state of mental health in Serbia, which means combating the prejudices and stigma towards mental health, and advocating for mental health protection based on respect for human rights, well-organised and equally available to everyone. It is easily observable that the banner under which MMH operates is following the international policy principles set by WHO

[6] For more about the concept of resilience, see, for example, Pavićević 2016.

and OHCHR, which were previously briefly described. The mental health policy situation in Serbia is dominated by the evaluation of the state of adoption of the crucial document of mental health policies of Serbia, *the Program on mental health protection in the Republic of Serbia (2019-2026)*. The document has been followed by the Acton Plan for implementation dating from 2022, and no later similar document has been issued. The *Report* highlights the lack of policy measures for the protection of mental health, human rights and the importance of those, particularly in the light of happenings that triggered the collective trauma, such as the mass school shooting in 2023 and the death of 16 people caused by the collapse of the roof of the Train Station in Novi Sad. On the other hand, the MMH Report highlights the need for harmonisation of the *Law on the Protection of Persons with Mental Disabilities*, which did not change in a direction towards aligning with the international standards despite the initiative in 2023. Furthermore, among the expected set of changes, this *Report* highlights the importance of improving the organisation of relevant initiatives and activities, which are so far happening mostly in an ad hoc, rather than a planned manner.

3. Awareness-raising campaigns addressing problems with mental health conditions and psychosocial disabilities

One of the internationally most utilised activities following policy initiatives to transform the mental health system is to help people grow their empowerment and resilience, rather than early diagnosing and hospitalisation is focused on different sorts of public and media campaigns. These campaigns are aiming to either raise awareness of mental health problems in general or advocate for the concrete institutional measures helpful in providing the treatment and service that is shaped under this new model. Following the overview of the policy initiatives directed towards transforming and reforming the mental health care system towards less coercion and biomedical stigmatisation, in this section, we will analyse several international and national mental health awareness and institutional advocacy campaigns, to open the question of their application in different countries globally and general possible and expected effectiveness in the final part dedicated to discussion and conclusions.

One of the most prominent international mental health awareness campaigns, also celebrated nationally across countries worldwide, is the World Mental Health Day (WMHD). WMHD occurs every year on the 10th of October and serves as the most prominent inspiring opportunity for various awareness and advocacy campaigns occurring at different levels and organised by different actors around the world. Every year on this date, various agents such as international organisations, non-governmental organisations,

professional associations, educational institutions, etc. design and issue messages calling for reframing and rethinking the existing approach to mental health issues and challenges we face regarding mental health. As we can see on the WHO's website, WMHD is internationally celebrated on this date starting with 2013, and ever since, every year the celebration happens that bears the name of a different group of population with the challenged mental health condition due to various reasons and disadvantages in life or issue related to mental health: adults, people diagnosed with schizophrenia, dignity, first aid, the workplace related mental health problems, mental health for the young generation, suicide, fundraising, inclusivity, globality of mental care, mental health as a human right etc. The last WMHD occurred in October 2024 and was dedicated to the topic of mental health in the workplace. As an indicative case, since it represents the most prominent international initiative, WMHD will be the first mental health-related campaign represented and analysed in this paper as an example of the initiative for the more consistent implementation of the human rights principles into the mental health protection system. The campaign on the occasion of the celebration of the WMHD in 2024 included different forms of advertising materials distributed by the WHO via various media channels and institutions, such as thematic publications, newsletters, policy briefs, and fact sheets.[7] In these materials, various issues related to mental health at the workplace were elaborated on to educate and inform the public while intending to normalise thinking and talking about mental health among people. While the accompanying publication for the celebration on this occasion is mainly constituted by the recommendations for trainers and other professionals on how they might add value to the employment of people with mental difficulties, the policy brief is structured around providing the set of policy measures and activities for, in the same time identifying the individuals at risk of developing the mental health problems and crisis, while on the other side proposing the following set of measures to be undertaken towards the person under the threat to develop the critical condition in response by the company or the institution involved in providing care and support or having such individuals working for them (WHO 2022; WHO & International Labour Organisation 2022). As a roof motive leading the organisation of the mental health awareness campaigns, the WMHD and the potential it could bring to the promotion and advocacy of advanced mental health care and support systems are at the international level irreplaceable in comparison to anything else, despite they should not overshadow all sort of other initiatives coming from different source of institutions on national or even institutional level.

[7] More about the celebration of the World Health Day and the following publications could be retrieved here: https://www.who.int/campaigns/world-mental-health-day/2024.

As the second example of an interesting mental health campaign that is demonstrative towards switching the perspectives for the mental health services among the policy makers, we have chosen to represent and briefly analyse the campaign pursued by the charity organisation, Rethink Mental Illness, a UK-based organisation composed of professionals dedicated to reducing the waiting time for accessing mental health services, among the other issues. The campaign has been motivated by the fact that people need to wait to be provided with mental care services, in certain cases, for more than 18 months. Such a long waiting period for accessing the treatment might additionally worsen the crisis individuals are going through, instead of providing them with adequate care and support. Therefore, Rethink Mental Illness pursued a campaign to reduce the waiting period, which is sometimes unreasonable long in the UK. This campaign has been realised by a form through which people subjected to an unreasonable long period of waiting could reach out to a member of parliament (MP) as the representative of the country and alarm him/her about the problematic situation.[8] The purpose of alarming the members of the parliament about the long waiting time, preventing people from obtaining adequate health care services, was related to the previous dedication of the government that mental health would be prioritised at the same level as physical health in the previously established political and policy initiatives of the politicians. This campaign seems to be not only a form of awareness or support for the initiative of making people more aware of the ways to proceed when they are in need for support and help, but also a good example of connecting the two forms into one that actively has the potential to improve the functioning of the mental health system in practice regarding the one concrete element.

Among the other types of campaigns framed in raising awareness toward mental health issues, we find media, social media and advertising campaigns that sometimes come within the broader international and/or national campaigns, but sometimes stand alone as a mental health policy measure. The last example, therefore, is selected more or less on an explorative basis from this group of campaigns as it demonstrates how commercial advertisement, in some cases, can serve as a tool for empowering resilience and mental health among the targeted population. The American company producing sports bags, JanSport, has launched a mental health awareness online campaign for which the hashtag #LightenTheLoad was created. The campaign was launched in May 2020, aimed to address the mental health issues among young people known as Generation Z, and at

[8] More information about the campaign of prioritizing waiting time for reaching out to mental health care and support service maintained by the charity organization of professionals Rethink Mental Illness might be found on their website: https://www.rethink.org/campaigns-and-policy/campaign-with-us/take-action-on-mental-health-waiting-times/.

the same time to normalise open discussion about them.[9] Speaking about the initial division between awareness-raising campaigns and those directed to offering practical and institutional instructions to people in need, #LightenTheLoad clearly can be understood as an awareness-raising campaign motivated towards the destigmatization of mental health issues. Key activities of the campaign were the videos portraying the young people discussing various topics related to stressful and overwhelming life in the contemporary world. The campaign also included various social media content demonstrating the same purpose and motivation, while the materials were made viral through partnerships with various organisations that have decided to support the cause. As part of the campaign, the various products have had the campaign slogans printed on them. The overall success of the campaign has been quite promising, to the extent that it has been praised as a way of introducing the topic of mental health in the school curriculum. In the article "In the Midst of Madness: Mental Health Literacy as Null to Explicit Curriculum in Public Spaces" by Erin Rondeau-Madrid from Purdue University published in *the Journal of Public Pedagogies*, these effects of the campaign have been elaborated on (Rondeau-Madrid, 2021). Therefore, the effect of such a campaign might overgrow the initial intentions of the initiators and bring much stronger and broader effects since the community, both national and international, clearly sees the need for improving the way the mental health system of care and support is operating in practice.

4. Discussions and Conclusions

In this paper, we have provided an overview and explorative analysis of the policy initiatives on the international level that have led to the reform and transformation of the policy framework for the mental health system under the paradigm based on human rights, empowerment, building resilience and providing a supportive environment in the community for people in need. These initiatives are working in the direction of moving forward from the biomedical model and towards abandoning the treatment that includes coercion and forced isolation from the community. These initiatives have led to the adoption of the treaties, which were followed by concrete legislative measures implying a stronger accent on supportive and empowering measures in contrast to the neuronormative, correcting and reactionary ones. Further explorative study demonstrated that these international normative initiatives were implemented into the action by different actors

[9] Generation Z (Gen Z or Zoomers) is a term referring to the cohort of young population following the Millennials, born in mid 90s and early 2010s. Some of the phenomena claimed to characterize this generation are experience mediated by the internet, smartphones and digital nomadism. For more information about this term, see: Cabiedes et al., 2025.

actively supporting the idea for different mental health care and support systems. The future analyses should provide insight into answering whether these initiatives gave the desired result and how to, both from a macro and micro level, do they increase the presence of the care and support that is grounded in a sense of strong respect for human rights and empowerment of individuals who face challenges and crises in their personal and professional paths.

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