

THE PATIENT RIGHTS IN THE LEGAL CONTEXT OF THE EUROPEAN COURT OF HUMAN RIGHTS

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Abstract. In this article the legal philosophy of the European Court of Human Rights - CHR is analyzed in order for aligning and specify general decrees regarding proper protection of patients rights. It is significant to mention here that the legal philosophy not only of the CHR nevertheless as well of the European Court of Justice - ECoJ is quite versatile and debatable. The knowledge of jurisprudence, which have developed a firm corporeal body in the case of litigation statutes regarding patient's rights is surrounding diversity judgment with complicated and outstanding conditions, which might be useful for not only medical staff and as well for domestic lawmakers in EU member states, that signatored the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms 1950 ConHR. Particularly medical health system in the Republic of the Ukraine might appreciate such input, since such state has yet to adequately define frameworks for defending basic rights in the delivery of clinical therapy services.

Therefore the objective of this article is to supply a short overview of the rights of all patients throughout the EU member states that signed the 1950 ConHR. In several tribunal proceedings involving repudiation to medical treatment, doctors might not leave their patients, nevertheless should make very applicable endeavor to relocation the patients to the course of therapy of diverse doctors or clinical entity. Some members of EC, states that signed the 1950

ConHR included a conscience stipulation that expressly communicate to tribunal of clinical staff rules.

Key words. philosophy, European Court of Human Rights, Protection of Human Rights and Fundamental Freedoms, conscience stipulation, clinical staff, legal entitlement to be healthy, disadvantages for members states, legal entitlement to support individual patient's well, abortion on request, Jehovah's Witnesses blood transfusions.

The doctrine of the ConHR. The ConHR per se did not assure a legal entitlement to medical health or a legal entitlement to be healthy. Matters including health, housing, social benefits and other socio-economic rights are traditionally more applicable and pertinently addressed in such legal instruments as 2009 Charter of Fundamental Rights of the European Union 2009.¹, as well as in the 1966 UN International Covenant on Economic, Social and Cultural Rights. Lastly there is crucial document - the 1950 Convention on the Elimination of All forms of Discrimination against Women, affirming women's legal entitlement to reproductive choice and independency. Article 16[1][e] assures women the equal legal entitlement to undertake the judgment determination freely and responsibly on the number and spacing of their infants.

Paragraph 35 of the 2009 EC CFR contains several stipulations that refer either directly or indirectly to patient rights, and were worth recalling: the inviolability of human decency [paragraph 1] and the legal entitlement to patient's well being [paragraph 2]; the legal entitlement to the solidity of the patient

¹ See T. Hervey and J. Kenner [eds.], *Economic and social rights under the EU Charter of Fundamental Rights: a legal perspective* [Oxford: Hart 2003]; S. Peers and A. Ward, *The EU Charter of Fundamental Rights; politics, law and policy* [Oxford: Hart, 2004]. The Treaty of Lisbon changes the position of the Charter from that of soft law to being legally enforceable .

[paragraph 3]; the legal entitlement to safety [paragraph 6]; the legal entitlement to the defense protection of individual data [paragraph 8]; the legal entitlement to non-discrimination [paragraph 21]; the legal entitlement to cultural, religious and linguistic diversity [paragraph 22]; the rights of the baby [paragraph 24]; the rights of the elderly [paragraph 25]; the legal entitlement to fair and just working conditions [paragraph 31]; the legal entitlement to social safety and social assistance [paragraph 34]; the legal entitlement to environmental defense protection [paragraph 37]; the legal entitlement to consumer defense protection [paragraph 38]; the freedom of movement and of residence [paragraph 45]. These fourteen rights were as well linked to another international agreements and declarations, emanating in peculiar from the World Health Organization - **WHO** and the Council of Europe - **CoE**. The most crucial legal paperwork of the WHO, approved in city of Amsterdam, Netherlands in 1994, includes the 1994 Declaration on the Promotion of Patients' Rights in Europe, the European Consultation on the Rights of Patients,, approved in 1996, Ljubljana Charter on Reforming Health Care.² Additionally another crucial legislations include the Jakarta Declaration on Leading Health Promotion into the 21st Century , approved in 1997, the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine CHRB, the 1994 Declaration on the Promotion of Patients' Rights in Europe, and the Charter of Fundamental Rights of the European Union - the European Charter of Patients' Rights.

Advantages and disadvantages for members states. The obligations of states that signed the 1950 ConHR were both negative and positive. In accordance

² This Charter addresses health care reforms in the specific context of Europe and is centred on the principle that health care should first and foremost lead to better health and quality of life for people

with the negative duty of signatory state to the 1950 ConHR, the clinical attention of ill patient must not be interfered unless there is 1950 ConHR-compliance justification for such undertakings. States that signed the 1950 ConHR might as well be commanded to undertake clinical modes of operations to safeguard the clinical care of a ill patient in line with the so-called favorable obligations. The scope of any such favorable obligation, including in health-related matters, will be decided by the conditions of the individual litigation in the case of litigation if it will be presented.

Health-related proceedings brought before the CHR have most very often been litigated in line with Paragraphs 2, 3, 8 and 14 of the 1950 ConHR. In accordance with Paragraph 2 it is commanded that states that signed the 1950 ConHR undertakes *rules* impelling clinical centers, notwithstanding if communal or private, to undertake applicable clinical modes of operations to defense patient's well being as it was determinate in the litigation in the case of *Marie-Thérèse Trocellier against France*³

In line with Paragraph 2 states that signed the 1950 ConHR are under the duty to stay away from bills or errors of a patient's well-being threatening nature, or which place the proper clinical care of all patients at serious threat. The judgment in the *İlhan v. Turkey* seems to be a good example.⁴

States that signed the 1950 ConHR as well had strict obligations to defense the proper physical condition of all patients in peculiar state in accordance with Paragraph 2. A complaint taken to the CHR might hence arise in line with Paragraph 2 where it is shown that the domestic agencies of states that signed the 1950 ConHR have put patient's well-being to threat throughout the

³ Trocellier against France [dec.], no. 75725/01, ECHR 2006-XIV]

⁴ The judgment in the case of Application No. 22277/93

contradiction of clinical management they have in accordance with taken accessible to the residents generally. It was echoed not only in the panel of judgment determinations in the case of *Cyprus against Turkey*, but also in the judgment proceedings of *Nitecki against the Reconnunial of Poland*, as well as judgment proceedings of *Opal against Turkey*.⁵ Nevertheless Paragraph 2 clearly identifies that state that signed the 1950 ConHR should not only stay away from the deliberate getting of patient's well-being, but as well defense the individual well-being of these patients within its legal power.⁶ While referring to the states that had signed the 1950 ConHR obligations to defense patient's well being, the tribunal had explained that these *decrees apply in the area of public clinical care too. The aforesaid favorable obligations thus command states that signed the 1950 ConHR to introduce rules impelling infirmary, notwithstanding if communal or individual, to adopt applicable clinical modes of operations for the protection of their patient's well-being.* In judgment case of *Silih against Slovenia* in 2009, Paragraph 3, 8 and 14 of the 1950 ConHR, judges decided that special structure must be put in place for the causation of passing away

⁵ The judgment in the case of Oyal against Turkey App. No. 4864/05, Eur. Ct. H.R. [unpublished] [2010]. The primary plaintiff, the baby of the secondly two plaintiffs, was born prematurely and diagnosed with an "inguinal and umbilical hernia." The kid required a number of blood and plasma transfusions during the firstly two months of life, and the applicant parents purchased the required blood and plasma quantities from the Turkish Red Cross. Fourthly months after medical staff carried out the blood transfusions, the parent plaintiffs learned that their son had been infected with HIV and that the virus was at risk of developing into so called Acquired Immune Deficiency Syndrome [AIDS]. Later, the Government authorities of Turkey discovered that a blood donor to the Turkish Red Cross was HIV positive and that the particular donor had previously given quantities of blood and plasma. It then became apparent that a unit of plasma given to the all patients have had come from the same HIV-positive donor.

<http://www.globalhealthrights.org/health-topics/health-care-and-health-services/oyal-v-turkey/>

⁶ <http://swarb.co.uk/calvelli-and-ciglio-v-italy-echr-17-jan-2002/>

of patient in clinical care and decided that responsible persons must be brought to account. The states that signed the 1950 ConHR are under the duty to ensure that the legislative and administrative framework set up to defend patient rights legal entitlement is properly implemented and any breaches put legal entitlement and punish. The CHR task in such proceedings was to analyze, if there was an adequate procedural response on the part of the state that had signed the 1950 ConHR for the infringement of the legal entitlement of patient's well-being.⁷

The legal entitlement to support individual patient's well-being provided by Paragraph 8 of the ConHR have assumed peculiar prominence in the CHR proceedings - domestic statute on the legal entitlement to health.. The CHR has interpreted the notion of individual patient's well-being as covering the legal entitlement for the protection of patient's biological, moral and psychological solidity, along with the legal entitlement to choose, or to exercise one's individual independency – for example, to decline clinical care or to demand a peculiar form of clinical care [as it was decided by the CHR in proceedings in 2004 in the case of *Glass against the United Kingdom of Great Britain and Northern Ireland*, §§ 74-83; as it was decided by the CHR in the proceedings in 2007 in the case of *Alicja Tysi c against the Republic of Poland*].⁸ In the last case after the judgment of the CHR in 2007 the litigation was closed. In the relation of discussions on a new Polish Tribunal judgment and the role of the recently appointed *Patient's Rights Ombudsman* [Rzecznik Praw Pacjenta] in this proceedings, it again became spectacular in the Republic of Poland. The domestic regulations about obligations and status of the patient Ombudsman were introduced in May 2009, but yet it seems that in the sphere of legal feticide the problem can't be solved easily. A

⁷ 2009 Judgment in the case Court's case-law No. 118. April 2009. *Šilih v. Slovenia* [GC] - 71463/01. Judgment 9.4.2009 [GC]

⁸ *Tysi c against the Republic of Poland* [Application no. 5410/03]

judgment of the Polish tribunal regarding the litigation of the claimant *Alicja Tysiąc* that was taken to tribunal in September 2009 was very important. The tribunal have admitted to the plaintiff quota of 30 000 PLN [polish currency] as a compensation of moral damage caused by the Polish priest. This time the litigation didn't concern all patients legal entitlement to a health care, nonetheless the CHR judgment from 20th of March 2007 was widely commented in such relation. The discussion, in which e.g. political parties, university academics and physicians participated was initiated once again. Due to the explanations and commentaries that came afterwards, there was no doubt that Polish state, signed the 1950 ConHR, codificated the legal conditions for clinical management industry services as well as for the feticide procedure. *Alicja Tysiąc 's litigation* should have been solved in line with to the adequate statutes stipulations. Conditions of the states that signed the 1950 ConHR would have been clearly met if the appellant wouldn't have been declined in the legal entitlement to receive the clinical legal papers proving that the appellant was in dangerous physical condition because of the her pregnancy. The appellant should have been admitted to the infirmary on the base of stipulations in force. The most crucial conclusion derived from the wide discussion was that the Polish appropriate clinical care structure lacked a powerful representation of organizations for protection of patient's rights - a strong appropriate clinical care. After the President's veto regarding the appropriate physical condition for clinical care package including the domestic regulations of all patient's rights the situation did not improve greatly. Only after the secondly pass of the domestic regulations the adequate legislation has been created. At the time of the *Alicja Tysiąc lawsuit against the Republic of Poland*, proceeding couldn't use such possibility and the appellant's objective was directed to CHR, but it was too late for a change. Presently, after the new trial in the Polish Tribunal regarding the moral damage causation by the press publication and the social

discussion, the Minister of Health in the Republic of Poland was being brought before the tribunal. He was questioned in reference of the essentiality of competencies of Patient's Rights Ombudsman in protection patient rights in clinical care for states that signed the 1950 ConHR.⁹

Paragraph 8 as well gave rise to both negative and favorable obligations. The tribunal had concluded that the states that signed the 1950 ConHR are in line with duty for safeguard the legal entitlement to effectual support for biological and psychological solidity and that is favorable. Tribunal took into considerations previous judgment in the litigation of the case of *Singes against the Netherlands*¹⁰; judgment in the case of *Pentiacova and Others against Moldova*¹¹; as well as judgment in the case of *Natick against the Republic of Poland*¹². Additionally, these obligations might command the states that signed the 1950 ConHR to undertake clinical modes of operations to supply effectual and accessible defense

⁹ Mokrzycka, Anna. "All patients have rights codification : *Tysiac against Poland*". Health Policy Monitor, October 2009
<http://www.hpm.org/survey/pl/a14/5>

¹⁰ The judgment in the case of *Sentges against Netherlands* Application No. 27677/02 The judges states that in view of their familiarity with the demands made on the medical management system as well as with the funds available to meet the demands, the national authorities were in a better position to carry out this assessment than an international tribunal;
<http://www.globalhealthrights.org/health-topics/health-care-and-health-services/sentges-v-netherlands/>

¹¹ The judgment in the case of *Pentiacova and Ors. against Moldova* Application No. 14462/03; [2005] 40 EHRR SE2 Plaintiffs filed a complaint with the ECPHR alleging that the Moldovan Government authorities' s inadequate financing of hemodialysis treatments violated their right to life, caused them significant pain and suffering, and negatively affected their families' lives. The judges states that based on the evidence offered by the Government authorities and plaintiffs' lack of comment on it, the Government authorities did provide for all necessary all patients have transportation costs as a matter of national decree, and there was therefore no breach under Art.1 [Protection of property] of Protocol No. 1 to the explained Convention.

¹² The judgment in the case of *Nitecki against the Republic of Poland* Application No. 65653/01

protection of the legal entitlement to support for patient's well being [as decided by the CHR in the judgment in the case of of *Airy against Ireland*, § 33¹³; and as decided by the CHR in the proceedings in the case of of *McGinley and Egan against the United Kingdom*, § 101.¹⁴ Similarly CHR ruled in litigation in the case of *Roche against the United Kingdom*, § 162¹⁵], throughout both a regulatory framework of adjudicatory and enforcement machinery and the implementation, where applicable, of specific clinical modes of operations [as decided by the CHR in the litigation in the case of of *Alicja Tysic against the Republic of Poland*, § 110].

The CHR has previously ruled in another proceedings involving the privilege of information about individual health. In judgment in 2009 in the case of of *Avellino and Others against Russia*,¹⁶ the Administrative Centre of Jehovah's Witnesses in the Russian Federation and 3 Jehovah's Witnesses have had decline blood transfusions while in communal infirmary because of their complain that their clinical files were disclosed to district attorney office. The tribunal reached conclusion that, with support of two of the plaintiffs, the state that had signed the 1950 ConHR infringed Paragraph 8 because the officials hadn't struck a fair balance between the legal entitlement to support for their individual patient's well-being and the district attorney office. The tribunal firstly contemplated notwithstanding if there had been an interference with Plaintiff well-being . The

¹³ The judgment in the case of *Airey against Ireland* [application No. 6289/73]

¹⁴ The judgment in the case of *McGinley and Egan against The United Kingdom* [case no.10/1997/794/995-996] 9 June 1998

¹⁵ The judgment in the case of *Roche against the United Kingdom* [GC] - 32555/96. Judgment 19.10.2005 [GC]

¹⁶ The 2009 ECtHR judgment in the case of *AVILKINA AND OTHERS against RUSSIA*, no. 1585/09, ECtHR [Firstly Section], Judgment [Merits and Just Satisfaction] of 06.06.201

tribunal confirmed that a patient's well-being included an array of information, including an information that patients can legitimately expect not to be exposed without their permission. The tribunal didn't determinate that the concept of patient's well-being extends to biological solidity since a person's body is the most intimate aspect of patient's well-being, and clinical intervention, even if it was of minor importance, constitutes an interference to such entitlements. The tribunal ruled that the clinical students' observation of the intimate clinical procedure, combined with their access to the appellant's confidential clinical information, constituted an interference to the appellant well-being within the meaning of Paragraph 8.¹⁷ In 2014 judgment in the case of *L.H. against Latvia* the plaintiff alleged, that in the state that signed the 1950 ConHR, agency's non-consensual collection of the appellant's individual clinical information without the appellant's legal entitlement violated patient's well-being. The tribunal reached conclusion that Latvia had infringed Paragraph 8 because the domestic regulations of the state that had signed the 1950 ConHR, giving to the agency authority to collect clinical information, insufficiently detailed the scope of the authorities discretion and the manner in which they should exercise their authority.¹⁸ It is a fundamental rule that all patients have a privilege for protection of their dental or clinical records by doctors in accordance with clinical care codification along with the legal entitlement for privilege in line with Paragraph 8 of the ConHR. As the CHR determinate in 1997 litigation in the case

¹⁷ <http://www.ijrcenter.org/2014/10/21/european-tribunal-of-human-rights-finds-medical-students-observation-violated-all-patients-have-s-right-to-privacy-in-konovalova-v-russia/#gsc.tab=0>

¹⁸ *See more* the judgment in the case of ECtHR, *L.H. against Latvia*, no. 52019/07, ECPHR 2014, Judgment of 29 April 2014, paras. 3, 60.

of *Z against Finland*¹⁹: supporting the privilege of appropriate physical condition, clinical care data was a vital in the legal structure of all states that had signed the 1950 ConHR. It was crucial not only to support the sense of privilege of all patients, but as well to preserve the appellant trust in the clinical profession and in the clinical care industry services generally.

All EC states that had signed the 1950 ConHR, signed protocols, allowing all patients to bring proceedings to the CHR. The ECOJ recognized human rights as 'general rules' of Community statutes in the 1960s.²⁰ One of the most crucial sources of such general rules of Community states was the CHR. Its position in Community statutes was recognized in the EC founding Conventions in early 1990s, and presently it's found in Paragraph 6 [3] T EC , which asserts that the CHR 's fundamental rights are the general rules of EC states.

Over several decades, a considerable number, hundreds statutes suits were brought to the CHR, in reference mainly appropriated a physical condition and patient's rights in clinical care. Health-related proceedings brought by the CHR mostly were very often been litigated in line with the Paragraphs 2, 3, 8 and 14 of the 1950 ConHR. The CJEU is ambivalent for the application of the legal entitlement to patient's well-being in the relation of clinical care appropriate clinical care technologies²¹, and there are all the reasons to expect similar caution from the ECOJ. Perhaps such it's in part because of the presence of competing rights of these patients who might have benefit from future therapies, and because

¹⁹ *Z V FINLAND*: ECHR 25 FEB 1997 [HTTP://SWARB.CO.UK/Z-V-FINLAND-ECHR-25-FEB-1997-3/](http://swarb.co.uk/z-v-finland-echr-25-feb-1997-3/)

²⁰ *Nold*, C-4/73, EU:C:1974:51; *Rutili*, C-36/75, EU:C:1975:137; *Johnson against RUC*, C-222/84, EU:C:1986:206

²¹ Flear et al., 'A European Law of New Health Technologies' in Flear et al. [eds], *European Law and New Health Technologies* [OUP 2013].

of communal interest justification applies in the relation of developing appropriate clinical care technologies.

The Tribunal is peculiarly attentive to the legal and policy materials relating to appropriate physical condition of clinical care which has been adopted within the framework of the CoE. The statute very often quite points to the recommendations of the Committee of Ministers in the appropriate of physical condition in clinical care sector, [as it was decided by the CHR in the proceedings of *Biriuk against Lithuania*, § 21], also to the 1950 ConHRs, including the Oviedo Convention [as it was decided by the CHR in the proceedings of *Glass against the United Kingdom*, § 58; *Vo against France*, §§ 35 and 84] and to the Council of EC section 108 ConHR [as it was decided by the CHR in the proceedings of *S. and Marper against the United Kingdom*]. The statute in line with the Community Social Charter on health-related issues is another source of guidance [as it was decided by the CHR in the proceedings of *Zehnalova and Zehnal against the Czech Republic* and *Mólka against Poland*].²² Such materials enriched the Tribunal and supplied as a key point of departure. While it comes to assessing notwithstanding, if there was an emerging Community trend in a peculiar area, the standard-setting activities of the CoE in the clinical care sector might as well enable the Tribunal to evaluate the scope of the margin of appreciation afforded to the states that signed the 1950 ConHR in peculiar issues.

The Tribunal improved as well the importance of giving access to information regarding threats to health. The Contracting states that signed the 1950 ConHR are, for example, commanded to adopt the necessary regulatory clinical modes of operations to ensure that doctors consider foreseeable consequences of a

²²THEMATIC REPORT Health-related issues in the case-law of the European Tribunal of Human Rights, p. 4
Council of Europe/European Tribunal of Human Rights, June 2015.

planned clinical procedure and inform their patients beforehand to enable them to give their informed permission. If a foreseeable threat is materializing without the patient's duly informing in advance, the state that signed the 1950 ConHR can be found in breach of Paragraph 8 [as it was decided by the CHR in the proceedings of *Trocellier against France*, § 4; and as it was decided by the CHR in the proceedings of *Codarcea against Romania*, § 105].

Hence, in the proceeding of *Csoma against Romania* medications to induce an abortion were given to the applicant, but because of complications doctors had to perform a hysterectomy to save the appellant patient's health. The Tribunal concluded that since the appellant didn't involve in the choice of clinical care and wasn't appropriately informed about threats, the appellant suffered from infringement of the appellant legal entitlement of supporting of the appellant well-being, contrary to Paragraph 8. Paragraph 8 CHR, the legal entitlement to protect of home and family patient's well-being, was used in the relation of appropriate privilege of patients information.²³

The privilege of patients. Particularly the Paragraph 2²⁴ has been used by ConHR in objectives regarding the standing of the fetus and necessity of

²³ *Evans against UK*, no. 6339/05, ECHR 2007-I.

²⁴ Art.2 Right to life 1. All one's right to life shall be protected by national decree. No one shall be deprived of his life intentionally save in the execution of a sentence of a tribunal following his conviction of a crime for which this penalty was provided by national decree. 2. Deprivation of life shall not be regarded as inflicted in contravention of this Art. when it results from the use of force which was no more than absolutely necessary: [a] in defense of any person from unnational decree ful violence; [b] in order to effect a national decree ful arrest or to prevent the 1965 ESC ape of a person national decree fully detained; [c] in action national decree fully taken for the purpose of quelling a riot or insurrection

abortion,²⁵ as resource allocation in clinical management structures and the legal entitlement to pass away.²⁶ ConH Paragraph 5²⁷ on the legal entitlement to independency and safety of the patient have been used extensively in the relation of mental treatment.²⁸ Paragraph 8 of ConHR²⁹ on the legal entitlement to privilege has been used in objectives regarding *reproductive entitlements*³⁰ [and can as well be appropriated to all patients with learning disabilities or mental disorder], as well as Paragraph 12³¹ of ConHR on the legal entitlement to marry and concluded a family.³² Paragraph 2 of the ConHR supports the legal entitlement to patient's well-being. Paragraph 3 ConHR forbids torture, inhuman or degrading course of therapy. Paragraph 6 of ConHR supplies that all patients are entitled to a fair trial within a reasonable time. Paragraph 14 ConHR forbids discriminating between all patients by officials relying upon rights set out in the

²⁵The 1992 EHRR judgment in the case of *H against Norway* [1992] 73 DR 155; *Open Door and Dublin Well Woman against Ireland* [1992] 15 EHRR 244; *Paton against UK* [1981] 3 EHRR 408.

²⁶ The EHRR 2002 judgment in the case of *Pretty against UK* [2002] 35 EHRR 1.

²⁷ Art. 5 Right to liberty and security 1. *All one has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in line with with a procedure pr1965 ESC ribed by national decree*

²⁸ The 2000 EHRR judgment in the case of *Winterwerp against The Netherlands* [1992] 15 EHRR 437; *Aerts against Belgium* [2000] 29 EHRR 50.

²⁹ Art.8 Right to respect for personal and family life 1. *All one has the right to respect for his personal and family life, his home and his correspondence. 2. There shall be no interference by a public authority with the exercise of this right except such as was in line with with the national decree and was necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the state, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of other*

³⁰ The 2007 EHRR judgment in the case of *Evans against UK* [2007] 43 EHRR 21.

³¹ Art.12 *Right to marry Men and women of marriageable age have the right to marry and to established a family, according to the national national decree governing the exercise of this right*

³² The 2006 EHRR judgment in the case of *Dickson against UK* [2006] 46 EHRR 419.

ConHR. The ConHR has been incorporated into states that signed the 1950 ConHR domestic regulations.

One of crucial legal entitlement was all patients' legal entitlement to the privilege, whereas the privilege was a basic human right, and that supporting by clinical staff of appropriate physical condition was vital for *all patients' biological, mental, emotional and spiritual well-being*. It is argued that the privilege of clinical appropriate physical condition can be infringed to all patient in a diversity of ways. For example, the legal entitlement to defense their clinical and individual information privilege ; the legal entitlement to expect a course of therapy with decency during intimate care; and the legal entitlement to control their individual space and territory.

Concluding Remarks. The findings suggest that significant part of CHR tribunal proceedings over the last 4 decades has concluded significant gains in the legal frameworks and institutions designed to address applicable protection of patient's rights in the CHR. Such formulation of patient's rights by the judiciary is a part of legislative endeavors to improve regulations of states that signed the 1950 ConH, which defends patients more active role in shaping the delivery of clinical attention services. Hundreds decisions of the CHR attempted to translate member states domestic legislature of the legal entitlement of clinical course of therapy into specific rules. Moreover essential is the fact that CHR judgment determinations influenced the members states statutes and guidelines and that the evidence presented to the panel of judges proved that there is no place for any bias, suspicion, or miss presentation patient's rights in the CHR.

The EC clinical modes of operations and previous precedent judgment should be accessible, transparent and fully consonant with both European and EU member countries statutes. Judged on this, because of factors, mentioned above, justice should no longer be identified with blindfolded figure, balancing a set of

scales, oblivious to anything that might detract tribunal from the search for an after-effect that should be just and fair for patients. The main domestic judicature function is to defend the justice, to assure independency and to reaffirm patient's rights around the states that signed the 1950 ConHR .

Additionally Tribunal is the guardian of maintaining of rules of statutes and of fast resolving disagreements among physicians, patients and clinics. Thanks to the enormous endeavors and trial work, the Tribunal is able to deliver equal defense to all patients, regardless of race, sex and religious background and finally to assure process due for national statutes.

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