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THE RIGHT TO DIGNITY AND CONSENSUS IN THE PSYCHIATRIC HEALTH TREATMENT

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ABSTRACT

Theoretical frameworks: Health workers in practice obtain the informed consent of the patient where there is an invasion of privacy. Health data are processed without consent, health treatment is carried out without informed consent, and is taken to the patient the possibility of an appeal, does not receive information about what to do and where to seek help, if necessary. Methods: Based on the long-term observation of conduct of healthcare workers, the analysis of legal acts and synthesis of statutory provisions for informed consent based arguments. Results Health workers against health interventions with greater impact on privacy and the integrity of the body does not obtain informed consent, offer a preprinted form. The patient is given an explanation focus, which is the duty doctor. Interpretation duty is not subject recording in health documentation which makes it impossible to trace back. Discussions Health professionals legislature requires compliance with legal rules, education in terms of knowledge of the law, it does not reach a satisfactory level. Health workers do not know the laws, and the patient's rights not exercised. In order to ensure the legal documentation is necessary to inform all health professionals with the laws and knowledge documentation.

Keywords: Privacy, Dignity, Documentation, Consensus, Health data, Safety health data.

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1. INTRODUCTION

The assumption that health data is basically collected and processed for the good for the individual, is not quite true. Already collected health data serving within the health institute for research, monitoring, capacity planning of health services and the financial basis of payment services. The processing of the collected health data for the purpose of medical treatment is also used for research students, but the individual to whom the data relate to health, does not bring any benefits. Due to the expansion of research it is often for research that does not necessarily bring advances in science. In all, it is an invasion of the individual's intimate sphere, without his knowledge and consent; whereby they violated the right to privacy and the right to dignity.

2. CONSENT

Consent, written, or oral implied, is the basis for health treatment, processing of health data should be this consent in writing. Consent must represent a statement of free will. Data processing of the data subject, the controller must first obtain a voluntary basis of information given consent. Consent by an individual embarks on the basis of lack of knowledge of the facts, without giving the other side the right to data processing. Operators look for processing of health data without gaining informed consent so incomplete information it provides predictability. Security Policy only provides complete information on the basis of which the individual knows the consequences of

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his agreement to personal data processing. In most research it is necessary for the processing of sensitive personal data to obtain explicit consent, in which the individual understands the message, how and where the data will be processed on the basis of which gives its consent. Mandatory content explicit consent is also an indication of what personal information an individual is allowed to process, for what purpose and at which opportunities. In the Republic of Slovenia (RS) no clear legal provisions on the need to obtain explicit consent, therefore operators are not generated. From the foreign case a consensus as permission to use the name of another, which is of great importance for ensuring the right to privacy. The ban on the use of names other without the consent of the reasoned explanation of the decision in *Millar v. Taylor* [1]. Constitutional protection enjoyed by private letters, in addition to a personal addressee and the author also includes written messages intended only for the addressee. Such messages may contain very intimate confidences and reveal the privacy of the individual, therefore fall within the protected area of privacy, as the Court based its reasoning in the decisions of *Ex parte Jackson* [2]. The medical treatment is often faced with a lack of power or knowledge of the patient to express his own will. In such cases, assume the decision by family members or significant other. The right to represent the will of the individual, the other person obliged to prove with clear previously available to the patient, as is clear from the reasoning of court decisions in the case of *Cruzan v. director, MDH* [3].

2.1. Informed consent given on the basis of the whole area display processing by such a statement will cover only condition for achieving justice. Transmission of health information is essential to a payment of health services information or redress, the insurance company may refuse to pay for services in case of refusal of informed consent for the transmission of health data. In doing so they are at serious risk and the voluntary exercise of the right to revoke the consent. Voluntary consent can be given only without any external coercion. External influencing the consent given represent both physical or mental coercion as well as any influence on the consent that is not based on the free will of the individual, and does not provide free will and consent of interference with privacy. From foreign jurisprudence that an individual voluntary and informed consent requires clear information; which data will be collected and for what purpose. This claim warrants an explanation of the court's decision in the case of *Miranda v. Arizona* [4]. Individuals should also be clearly informed about their rights in a way that rights also understand. The signing of the ready form, with which the individual waives his rights, is not sufficient to protect privacy and does not constitute actual termination rights of the individual, if this is about their rights is not informed in an understandable way. Such a request of information on identified the US Supreme Court in the grounds of the decision in the case in *Duckworth v. Eagan* [5] Overview interpretations of judgments indicates the fact that the explicit consent of the exact informed with all foreseen processing of personal data without concealed facts. It is shown to be planned processing of personal data that is subject to consent. From the presented examples that processing and data acquisition on the basis of consensus, which is the result of guilty displaying medical treatment does not mean the expression of an individual so that he can`t exercise their rights. When an individual is not aware of the facts, they can`t exercise their rights by preventing acts. Therefore, the right to privacy legislation necessarily better defined in relation to health data, as in this case, the area to which the public I can`t be justified. It is necessary to set a limit in the event of public interest in relation to public entities and public information there separated from those for which only an individual gives consent for the processing. On the basis of reasoning by analogy, it has the right to privacy in the health sector to strengthen the requirement for explicit evidence of the individual's will. The patient is given the right to prohibit the processing of their data and determine whom they may communicate to the doctor during his lifetime. Also, the individual has the right to prohibit pairing with its data even after death. Respect for such a ban represents a major step towards protecting individual privacy in health information. Ignorance of the law is as it is for the protection of privacy requires knowledge of the law in all spheres of life. In addition to all *Patients Rights Act (ZPacP)* [6] it covers only the duty of a professional, but does not provide the clarification of rights. Interpretation duty does not include the field of rights concerning the protection of health information after death. An individual's informed statement regarding the use of personal data to

contribute effectively to the protection of the dignity and privacy in life and after death, but the legislature this information before obtaining the information does not require anyone. This also applies to interventions in the privacy in the processing of health data on the basis of reasoning by analogy, the interpretation of the decision in the case of *Miranda v. Arizona* [4]. The same applies also to the rights they waive patient by signing the pre-printed form. With this signing transmits power to take decisions on health care workers, most without information, how and by whom these data processed. Fair treatment requires prior acquaintance with the individual data processing to him clear and comprehensible manner, on the basis of which give consent or refuse treatment. Information should include information on the method of processing, storage location, access, photocopies.

2.2. Consent to record messages spoken word from the domestic case law also follows the right of everyone to decide on the range of persons who may be familiar with his voice message, because the spoken word in its own way transmits information about the personality of the individual. Where the individual transferring the information to the spoken word in an environment where he can be expected that the conversation will not be heard by anyone else, including the recording of voice without consent is not allowed. The individual must be guaranteed the ability to decide on the transfer of his voice. Thus, the recorded message could therefore have been no opportunities to influence the person who created the voice messaging, also played a third party. On the grounds of the decision of the Constitutional Court of the Republic of Slovenia in the case of *Up-472/02* ensure the respect of the spoken word on the basis of Articles 35 and 37 of the Constitution of the Republic of Slovenia [7]. The legal basis of these rights provides the right of every person to decide whether his voice will be recorded and the sound via the carrier may be forwarded to third parties. On the basis of voice recording can be played separately from the owner. This record gives power over another person and his personal good. The possibility of repeat play voice prejudice to the exclusive right of a person to dispose of their messages and decide who can be heard. Confidentiality of communications is guaranteed in the 35th and particularly in Article 37 of the Constitution of the Republic of Slovenia to ensure the use of the spoken word against the owner himself. It is therefore guaranteed protection (secret) recording of conversations without the consent of all persons involved in the conversation [8].

2.3. Consent to obtain medical data such consent in certain cases forwarded to applicants operator. On the basis of such a document beneficiaries receive the medical records of others. This document could legislator has not limited duration. The patient can consider, therefore, the legislature must determine in the future such consent is given for single pairing. The legislature should set a deadline of the occurrence of such a document to consult in order to prevent abuses. For each pairing is required before the written consent. The problem is the identification of the signature of the patient when the patient is not present, and the authenticity of the signature can`t be verified by the operator. Written consent to the processing of personal data as part of the application for the acquisition of certain rights must be an expression of a clearly expressed intention. In order to protect the rights of patients and health professionals to consistently obtain informed consent, the State is obliged in future legislation to protect individual rights against third parties even in the criminal justice field.

2.4. Alleged consent of local case law of presumed consent states that an individual would not have made if I had the power and knowledge. The importance of presumed consent in the grounds of the decision in the grounds of the decision of the Supreme Court of the Republic of Slovenia *VSL II Kp 1417/2009* displays a risk that an individual with reduced perception of acquired data represent a charge against him [9]. EU does not accept presumed consent because it is predicting an individual's decision unreliable. European law requires the operator obtaining unambiguous consent to the processing in Article 7 of Directive 95/46 and provides that personal data may be processed and transmitted under the Act only if certain conditions are met [10]. Consent is not required where the controller, in accordance with the law processing information necessary for its statutory functioning and implementation of tasks in the public interest and in the exercise of official authority. Cases where consent to the processing of data is not required, it is necessary to provide explicitly most in the processing of health data, where applicable statutory provision of confidentiality contractor. The legislature provides managers in the public sector,

the collection of personal data intra legem, managers in the private sector as well as on the basis of personal written consent of the individual. Informed consent makes health workers in the private sector does not provide; basis for the collection as a presumed consent represents already the choice of a personal physician. Express consent to the collection and processing of data but form does not contain a choice of doctor. Such a broad right processing of health data in the private sector does not offer predictable handling. While the doctor's legal obligation to keep the medical records of the patient may not prohibit, but control of secondary processing such data state does not provide. It is common practice sign the form in which they are given a second fact with which one agrees. Such a form is added to the declaration of the authorization process and transmit data. Providers of medical treatment while in pursuit of these patients' rights and the fulfillment of the form is not consistent. One set of data processing can`t be prevented. In the drawn form a patient answers only the question of participation in the educational process. But it does not have the possibility to decide whether his data may be used for research purposes even after medical treatment.

2.5. Consent to the processing of data in scientific research purposes health data collected for the purpose of medical treatment without the individual's knowledge of the allegedly processed in scientific research purposes. Upon expansion of education, it is often the use of health data for research that does not bring benefits; invasion of privacy, it can be great. Health records shall contain highly sensitive data, individual confessions, anxiety and feelings of the individual. It is because of the intrusion into the private sphere, I think that they deserve such information specific protection after the death of the individual. Based on *Patient Rights Act (ZPacP)* the patient has the option to prohibit access to medical information after his death [6]. Interpretation duty in the field of exercise the patient's rights is not accessed healthcare professionals. Even so patients are not aware of these rights, and is unable to exercise. On the other hand, would ban the use of health data for research purposes a major impact on the development of the profession. Despite the policies of the EU, which requires informed consent, are for research purposes in practice the medical data to the presumption of consent. On the other hand, the Republic of Slovenia managers of health data do not have full control over the management of health information in paper form. Also, research shows that the impact on the treatment of individuals and the security of health data in the past 30 years strongly reduced. The quality of life of individuals and their offspring depends on the degree of legal protection of personality rights. Personality rights that belong to each person to his death off. These rights can`t be inherited or transferred to another; also not barred. Problems of the use of personal data in research are increasing the costs of research projects due to the rules of privacy, confidentiality and obtaining approvals. The principles of personal data protection require that the patient in the study agree, otherwise, researchers can only be processed completely anonymous information. Problems arise in the case of epidemiological research, which often require access to routinely collected identifiable personal information or identification of research participants from these data. Obtain an individual's consent in a large number of patients is difficult and almost impossible due to death, renaming or moving. Anonymisation data is difficult and expensive. Lengthy procedures of obtaining consent for the processing of data for research purposes, therefore considerably reducing the resulting value. Therefore, the National Board of Health in England and Wales suggested that the anonymous data collected centrally and serve for analysis, research and review. Individuals themselves do not know how to protect personal data and to prevent damage resulting from their processing. In order to safeguard personal and health information is public awareness regarding the use of personal data in research is essential, as confirmed by data studies. From foreign jurisprudence that the basis for the research contains personal information and even images of patients and their relatives. Presentation of the survey obtained material has a limited mandate. It can be used only for the narrow purpose agreed. For this reason, an individual researcher is obliged to accurately present the purpose of the collection and use of data thus collected. Based on such explanations of the individual researcher to obtain precise mandate, by whom and for what purpose the data processed, as well as the exact specification where not running, which is in the grounds of its decision upheld by the Court in the case of *Gillberg v. Sweden* [11]. When it comes to personal

information, which will be screened in recognizable form or otherwise used, it is necessary to conclude such an agreement in writing. One expects the confidentiality of health information that is entrusted to a doctor. Also, due to the fact that the absolute confidentiality of the information the right of individuals to voluntarily participate in the survey, it is essential respect his will, where and under what conditions the data thus obtained may be used. Thus, the use of health data affecting the integrity of the individual, subject to obtaining the consent of the individual or should exist for this legal basis, as is apparent from the grounds of the decision in the case of *YF v. Turkey* [12]. From the displayed treatment of personal data follows the importance of ethical evaluation of biomedical research. The RS has such an assessment of research projects launched in the mid sixties with the establishment of the Commission for Medical Ethics (KME) at the Medical Faculty in Ljubljana, because at that time in health research carried out by physicians. The development of science and education has brought research in other areas (nurses, occupational therapists, physiotherapists, social workers and others), resulting in future legislation necessary to change the structural representation of KME, because it still works on the basis of the Rules governing the composition, tasks, powers and mode of work ethics committee of the 1995 Regulations gives jurisdiction to grant KME a survey by not anonymised data. In the absence of legal provisions and conduct such research data on subjects represent a time bomb. In the RS, the research in health care in the vast majority used not anonymised data in the publication of research appear only in anonymised form. Anonymisation of health data prior to it collides with the dilemma as covering those data does not allow return to its original state, thereby verifying the results of research. Anonymizing paper forms of medical documentation implies overlapping of personal data and their inability to re-establish and consequent loss of authenticity and verifiability of the document. The biggest danger of prejudice to the privacy of research already collected clinical data, which will remain discreet individual, thus deprived of the right to protect their privacy. Uninsured research data containing full personal and medical information, you can also after the completion of the research represent a serious threat to individual privacy. It is because of the possible consequences is given informed consent to use personal data of great importance to the rights of those being researched. In connection with the consent for the processing of personal data it is intended for processing of personal data for research purposes in the United Kingdom for the treatment of personal data on the basis of presumed consent. Presumed consent is not in accordance with the guidelines of the EU - every patient must give informed consent on the basis of information about their right to prohibit the use of their personal and medical information for research purposes. The duty of obtaining informed consent includes in addition to information on the implications of the information on the right ban on the processing of personal data for the lifetime of the person to whom they relate. The current Slovenian legislation the explanatory duty before given patient consent is legally required. Due to the still subordinate position of the patient, but in practice this obligation is not fully implemented; particularly in respect of research are carried out superficially and act arbitrarily. Researchers need to study, performed upon personal data, which are not in anonymous form, to obtain the consent of the Commission for Medical Ethics (KME), otherwise the gap research consent of the data subject. The consent of the patient for the study must be obtained in direct contact. To call the patient by phone or letter home already requires the consent of the individual. Legal provisions other than the protection of personal data , are written for medical research. Based on a literal interpretation of the existing legislation, other research in the health sector are not regulated merits. The biggest problem today is the excessive number of researchers in a clinical setting and research health data in not anonymised form. The patient has no insight or influence on who all was aware of his health data, this information is not recorded in the medical documentation. Individuals in this losing privacy and dignity. The educational process is essential better awareness of researchers on the protection of personal data and the handling of sensitive data and data carriers. Education student researchers on the protection of personal data could be a decisive influence on the handling of data from the first research within the study further. This is what education is crucial for the further conduct of research, which will be as future researchers implemented, it is the country entered into the curriculum for information purposes only. Field exploration in RS governed by different

laws, each in its own narrow conception. Basic and compulsory guidance in research are still provisions of the Helsinki Declaration, European guidelines and recommendations of the Convention, the Code of medical ethics (1992), Slovene Nurses' Code of Ethics [13] documents the World Medical Association and the *Law on Protection of Personal Data (ZVOP-1-UPB1)*. The processing of sensitive personal data (epidemiological data, data on HIV infection) while KME require the researcher to guarantee the irreversible anonymisation which does not achieve the desired purpose when many researchers have disclosed not anonymised data. Control over the congenial to the legal norm the state has not provided, nor guarantees. *ZVOP-1-UPB1* in Article 17 defines the processing for historical, statistical and scientific research purposes [14]. In the second paragraph of that article provides that personal data are transferred to the user for the purpose of processing statistical and research purposes in anonymised form, unless the law provides otherwise or unless the individual to whom the personal data not previously made a written consent to the processing without anonymisation. In practice, with a view to the operation of intra legem offer the patient a form with the statement that personal data will be published in anonymous form, which does not constitute informed consent. Thus, the operation represents fraudulently obtaining consent, because it does not provide information on the treatment non anonymised data. The third paragraph of the same article imposes a duty operator of the personal data that were transmitted user data for research and statistical purposes at the end of treatment to destroy. From a literal interpretation of the legal rules to note that researchers are bound photocopies of medical records manager to return the database, that you must destroy. If, on the basis of an agreement to ensure the destruction of the researchers themselves, are on duty to, without delay, notify in writing the manager of personal data collection. It must be given manner of destruction. This phase of research managers and researchers are not carried out, is not precisely defined processing data nor sanctions for offenders. Educational institutions are obliged to prepare future professionals for the safe use of personal data, while ensuring the completion of the study only intra legem acquired research data. The tasks of the mentor, researcher surrender anonymised data to verify knowledge of the protection of personal data, the researcher required to sign a declaration that the data will not be photocopied, obtain a photocopy of the completed study and arrange for its destruction. In the event that conducted survey on non anonymised data, the legislature mentor to impose a duty to care for the records discovery of data. The person to whom the data subject, in accordance with Article 30 of the *ZVOP-1 UPB1-1* right to be informed as to the list of data to be collected about it, as well as a list of users that have been transmitted personal data and thus, when, on what basis and for what purpose processing as well as the decision-making process concerning the processing of its data. Traceability of the processing of health data in paper form in the RS detail at the implementation level not covered by any legal document. Therefore, this part of the processing of personal data is not implemented well, despite the individual's right to consult these data. Negligible, therefore the claim that the purpose of research not anonymised health records accessible to many researchers, these data are inaccessible to the patient because of access and data processing nobody records. All research intrusive individuals living in their health records, as well as psychological and sociological studies conducted on the basis of questionnaires in the field of privacy, must undergo prior ethical review and be approved.KME requires the consent on the basis of explanations for all research, including surveys, conducted on archived personal and health data and biological samples. On the other hand, the ethical review historical documentation there is no legal basis. The *Law on the protection of archives and archives (ZVDAGA)* [15] the consent of KME does not provide, making this provision Archive KME not respected. Overview of such legislation gives the impression that it is an end in itself, but in practice does not guarantee privacy. Laws in the RS regarding the use of personal data are clear but too general. Violations of the rights to privacy are also due to lack of management controls and adequate penal policy. In accordance with the law on the basis of Article 17 of the *ZVOP-1-UPB1* allowed to use only anonymised data for historical and research purposes where there is no other statutory provision or an individual to whom the data relate has not given consent to be processed without anonymisation [14]. This provision is not respected researchers. Above all, the individual nor obtain explicit consent, but operate on the basis that the research does not

oppose if such a document is not signed. For medical research, in practice, if so, researchers obtained consent for the use of data, but not explicitly for processing non anonymised data. Also the Penal Code is clear. It prohibits the processing of personal data without legal basis or the consent of the person to whom they refer, and determines the amount of penalties. Due to the assumption that it is in the research for the public good, such internal processing in this section is not controlled by anyone, which is not sanctioned. Thus, the Rules on the concession for the public service in the field of research concessionaire doesn`t impose any kind of duty in relation to the processing of personal data. Thinking about what other than a lack of internal control is to blame, that the law is not respected, lead to an answer that on the other hand, often only benefit researchers, because research is too often an end in itself and not a higher interest - this is a public good.

2.6. Consent is not required given without the consent of the public release of personal data is lawful where it aims control the use of public funds. In the event that the publication and its purpose is transparent, it pursues the objective of *Directive 95/46*, under which Member States have discretion in the implementation of the control of public spending and thus prevent abuse [10]. Any other publication of personal data pursues public security or public spending is not permitted, as confirmed by the decision to make public the lists of beneficiaries of roll-call rights in the case of *Volker und Markus Schecke GbR (C-92/09), Hartmut Eifert (C- 93/09) in. Land Hessen* [16]. Such public release personal data so constitutes a violation of the right to protection of personal data and the right to private life. In particular, the public announcement of medical data requires a strict proportionality test, weighing prejudice to the rights and benefits of publication. Such publication of medical data may also abuse occurs even when the public announcement of reasoning judicial decisions. In the case of a judicial decision on the publication of personal data regarding interference with privacy and compliance of legal provisions with Directive 95/46, the court shall first determine whether it is personal information as defined in Article 2 (a) of Directive 95/46. It is therefore necessary to consider whether the information relating to an identified or identifiable natural person, and whether it is lawful, in accordance with Article 7 of Directive 95/46 [10]. Thus, the legality of the publication of personal data without the consent of the individuals and the compliance of Austrian legislation with the provisions of Directive 95/46 / EC of the ECJ examined in conjunction with the publication of personal data in cases *C-138/01, C-465/00 and C-139/01* and examined or to achieve the aim of the *BezBegrBVG* [17] the transfer of anonymous data. The publication of personal data of Slovenian judicial decisions is not negligible fact the small size of the country and the recognition of an individual on the basis of geographic data. In order to avoid the production of profiles from publicly available information the Administrative Court of the Republic of Slovenia in the grounds of the decision Administrative Court of the Republic of Slovenia *IU 1047/2010* as illicit acquisition of personal identifying information from public sources and generating a new database from them. Such acquisition may be permitted only on the basis of the law or with the consent of individuals. On the basis of reasoning by analogy can be prohibited data processing situate the production of profiles of customers.

3. REDUCED OPERATIONAL CAPACITY

Although it may seem negligible, but not so trivial consent to the processing of health data of persons with reduced or deprived of legal capacity. Persons with mental health problems is the capacity withdrawn because of the assumption that their rights not able to defend itself.

3.1. Consent to the processing of health data and the reduced capacity of the patient to health treatment and processing of personal data is an important consensus, which is for people with mental health problems is questionable. In connection with the questionable privacy agreement signed by the patient with reduced decision-making ability and understanding. This is the right processing of personal data refusal to consent, relating to the participation of other persons in the health treatment (especially for the presence of students and pupils), and patient participation in research. The consent of the patient for medical care in connection with the explanatory duty often collides with the dilemma of validity of transactions in the event that the person gives consent to the

withdrawal of capacity or due to the nature of the disease with current reduced. In domestic law does not define the method of obtaining consent for the acquisition and processing of medical data by persons deprived of legal capacity, which is expected as standard explanations do not understand and are not able to defend their rights. From the presented arguments showing the dilemma regarding the legal validity of the consent for medical treatment and processing of personal data of an individual with a partially or fully deprived of legal capacity. *ZPacP* Article 30 gives the right to decide on medical treatment to anyone who is capable of making about themselves. In the stage of obtaining the consent of the operator (read a nurse, doctor) does not have data on business skills, because this record is accessible through health card. Absence of such data is the reason that the agreement signed by the legally incapacitated person. In the event that the trustee does not agree with such a statement and not sign the document has no legal force. Under the applicable law this area is not regulated, so managers do not check the legal relevant facts. In practice, the health treatments of individuals on health grounds of reduced operating capacity, which occur in the acute phase of the disease people with mental health problems and because of the different impacts on the physical and mental condition of the person (alcohol, drugs, brain injury, poisoning, etc.). The teleology of informed consent leads to the conclusion that such consent of that person can`t cross if it is not presented its rights on it comprehensible manner. Language interpretation, however, leads one to conclude that the consent that is given solely on the basis of standard, unadjusted individual explanations do not constitute a valid legal document from which we can conclude that all health data are processed without consent, as well as medical treatment does not take place on the basis of consent of the patient. Based on the conclusion of *a simili ad simle* for their own health information with a person deprived of legal capacity can not apply itself, but formally it can do it just her, a court decision specified administrator. Operators, therefore, from all, including the legally incompetent patient, gaining consensus, whereby there can be deceit eventual. Above all, such an acquisition consent of the incapable patient can be assessed as negligence. *ZPacP* determines that an individual has attained the age fifteenth year able to give consent to medical treatment (paragraph 2. Article 35) and to decide which health data and to whom the contractor can provide (4 para. Article 45). On the basis of reasoning by analogy, every person who may be made orally or by implication express its will for medical treatment, according to the fifteenth year of age validly give consent. An individual, even a person with mental health problems, which is capable of communication can thus after the fifteenth year of age validly give consent for medical treatment. Procedure pass from informed, valid consent for operational or other invasive procedures and approvals relating to the protection of privacy and participation in research with a single person deprived of legal capacity can`t provide. Such informed consent may give an individual, when he no longer needs intensive medical treatment, if a medical reason for a limited ability to understand. Dualist approach to health treatment, there is currently a patient on the one hand against the will of hospitalized while giving it the opportunity to itself "to protect their rights" by signing an agreement on cooperation in research and transfer of medical data. I think it is time intensive medical treatment this signature can be given only by countersignature legal representative, a representative for the special case represented by persons in the field of mental health representative or patients' rights. The facts, however, require the competent ministry statutory change in the form of consent and separate signatures for the patient and agent. Health care workers in an effort to "act in accordance with the law" derived from the consent of the patient, not realizing that the resulting banned consequences. Artists for asserting the rights of the patient therefore necessarily have to have information on the operational capacity of the person recorded on the medical card. When processing data of the person with mental health problems, deprived of business capacity, it can also be given consent to the researcher for data processing. The health data of people with mental health problems are often found the data on their relatives. Given the sensitivity and complexity areas that include health data, it is important that the consent given on the basis of a conscious decision and familiarization with its consequences. Therefore, informed consent to the processing of such data may give a person who is able to defend the rights of the individual and related persons, to whom it is presented in an understandable way the purpose of processing. Where, in spite of the personalized mode of

presentation of the intended treatment of an individual is not able to understand it must decide on these rights a person acting in his well, that's including patient medical delegate.

4. DECLARATION FORM WILL

Based on the patient's rights an individual has the right to deliver health care provider declaration whom the contractor of his health may not be disseminated. This law, therefore, the patient in Articles 41 to 46 gets the right to prohibit pairings with their medical files in life and after death. The safety declaration of intention, consent to the processing of medical data while the legislature did not provide. All forms the declaration of will within the health records but one of the documents. To ensure the safety of the forms of statements patient's will is necessary to clearly indicate the existence of this document. The existence of an agreement or other declaration of intent and its contents must be transparent and warn the operator when using medical records. In the case of manual collection of health data ensures the exercise of the will of the individual written warning with a red label already on the title page. Within the medical documentation record of the form declaration of intent with a red pen to ensure visibility. That record still required in addition to the content from the date of acceptance of the declaration of will and signature health worker who has adopted. Only a transparent record of the existence of a declaration of intent and consent can ensure its security against theft and respect for the dignity of the individual. Processing of health data for all contractors is underway with the help of IT equipment, so it should be a document of any declaration of will scan and implemented in a computer system. For a higher level of ensuring the dignity of the individual must each computer system noted artist of the existence and content of the declaration of will of the patient.

5. RESULTS

Overview of European law, both domestic and foreign legislation, and explanations of decisions shows that the consensus as a form of personal expression badly defined. European law otherwise provides for explicit consent, something that our legislation is not streamed. Experience in practice shows that with regard to the processing of medical data explanatory duty, as a basis for obtaining informed consent is not an established practice.

6. DISCUSSION

The health data is a public good. This fact is most of the citizens aware and does not oppose processing, in the event that the operator is responsible for privacy. One does not have full control over their processing of health data in the health institution. While the processing of health data beyond the controller more follow statutory requirements. That health data is a public good, it is also confirmed by the fact that medical data that are part of the history of the nation do not enjoy privileges. Health data of persons who have been reading in the University Psychiatric Clinic Ljubljana are based on the Classification Plan archival material, making this information wanted to take the state archives. On the basis of the constitutional complaint the manager reached the safety of medical information from public insight. The Constitutional Court upheld the operator, as guardian of patients' rights to privacy and dignity. From the reasoning of the Constitutional decision *UI-70 / 12-14* so that the legislature must adopt a specific regulation on the preservation of health records sufficient to ensure respect for the decisions and protection of human rights of patients and their families. Above all, it is their right to protection of personal data and the protection of the inviolability of human dignity [18]. The Constitutional Court referred to the decision to change the legislation stopped the execution *ZVDAGA* in the part which provides medical documentation and publicly accessible archives. From the operator's proposal also it indicates that these data remain inaccessible to the public 150 years since the creation of this material. The permitted operation in the dignity and privacy of the individual to whom the data relate to health will in any case be decided by the court archives. Withdrawal of business skills is on European soil, all too often the result of mental health problems. One therefore has no legal force. Consents by the individual alone can`t provide, but by him for important events gives another person;

However, according to the Council of Europe represents a "civil death". According to rough estimates, in Europe one million people deprived of the ability to decide. At only standard information becomes disabling fact, because the individual will not be able to understand the message. However, when an individual has the time and opportunity to understand the information itself will make decisions about their lives. Therefore, the health worker in such circumstances to spend more time to explain the medical treatment, the risks and benefits of the patient must have more time to think. People who have difficulty understanding the message, therefore, the state should offer help to preserve their dignity. Modern society does not ask or more individuals can give a valid consent, or has legal capacity. National authorities, social and health services should follow the change of the concept of legal capacity and thus the legend of the Council of Europe with the concept of establishing which support individuals need to exercise legal capacity. Individual rights can defend him comprehensible manner and also present a health agent. Health Commissioner has established itself *Patients Rights Act* by which an individual can be determined instead of the legal representatives of another adult who will work him in the highest good and in line with the mandate passing the consent for medical treatment.This institute the protection of patients' rights is rarely used, mainly because it is necessary to form the preamble of the patient to authenticate the signature on the management unit. The legislator has not foreseen the possibility of signing that form during the hospitalization itself, and therefore within the health institution. It is also not ensure the safety of the document itself.

7. CONCLUSION

In this article I want to highlight two things: on the one hand, obtaining informed consent from the individual, despite the constraints in understanding and on the other side of the security documents within the health records represent an affirmation of the patient. European legal regulations in the area of ensuring the dignity outdated and in urgent need of reform. The European Community is currently one of the most important issues of the right of persons with disabilities to make choices about their lives and enjoy legal capacity on an equal basis with others. Legal capacity, such as the assumption of adult individuals, should be extended to persons with disabilities. The United Nations Convention on the Rights of Persons with Disabilities in Article 12 of the synthesis exercise their legal capacity. In this case; so the ability to have rights and, on the other hand, the ability to realize this right. People with mental health problems that their rights can be achieved through adequate support. An individual has the right to participate in any proceedings that affect him, for which it needs the right to proper legal representation. This creates the duty of the government, state agencies; as well as health and other service providers to procedures adapted to users. In particular, this concerns the provision of information in simple language and supporting the individual. Therefore, the inclusion of people with mental health imperative in the process of regulatory reform, especially in the field of legal capacity. In order to make such an empowerment of people with mental health problems also realized should the processes and operators to define legislation. Transparent existence of a declaration of intent and its respect for the individual, the decision of the Constitutional Court and the agreement represents a major step to safeguard the dignity of individuals with regard to the processing of medical data. Completing the realization of consensus and thus their right to dignity represents a double defined acceptance, use, protection and revocation of consent and other declarations of intent of the individual.

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