

# GOING INTERNATIONAL

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## **An Appeal to Raise Awareness of the Importance of Mental Health Care and Suicide Prevention (After the 2020 Coronavirus Pandemia)**

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### **Introduction**

Mental healthcare and the prevention of suicide are highly important problems of contemporary society. Mental health is considered to be one of the biggest and most serious health problems in Europe, according to the statistical data of the WHO and EU Commission. During the 2020 Coronavirus pandemic this health problem of the society as a whole has even deepened and expanded. The purpose of this essay is to address these two, too often forgotten or neglected problems, at least according to the media agendas, public attention, and the focus of daily political debates on other, completely different issues. My intention is to make a small contribution to raising the recognition of the existence and importance of both problems in the EU member States and at the global level. And doing so by appealing to the international community there is a compelling societal urgency to raise *common awareness* of the importance of mental health and suicide prevention. Especially after the 2020 Coronavirus pandemic (or, as many doctors, medicine scientists and WHO emphasize, after its “first wave”).

### **Mental Healthcare and Suicide Prevention Are Important Legal Matters**

These are not only medical problems. And these are not only questions for philosophical, ethical and social deliberations. These are also, quite strongly and deeply, legal problems: problems to be addressed by law, with thoughtful legal policies. Even more so, the State's legal obligation is to actively exercise the responsibility for public mental health and the prevention of suicide.

Such responsibility of the State (each EU and Council of Europe member State) is its *positive legal obligation*, founded in the international and constitutional law. This positive legal obligation

of the State surpasses the mere protection of rights, freedoms and other legitimate interests of the people with different kind of mental disorders against the intrusions in these rights (the s.c. *negative character* of human rights). First, this positive obligation covers the existence of quality programs for the effective prevention of the risks for mental illnesses or disorders, but also – or even especially so – for the prevention of suicides *per capita* in each EU member State, or rather – in the EU as a whole. By other words, this positive legal obligation of the State demands the institutionalisation of effective assistance to individuals with different mental disorders. Second, the State has to realise the goals and commitments which are determined by national programs for mental health effectively, with emphasized determination and, above all, with high degree of political and ethical responsibility for human life, health, liberty and dignity. In doing so the State must assure the proper legislation, sufficient funds for medical institutions and research centres, but also the employability of the professionals in this field. Third and above all, it has to develop quality, effective and available public health system *as such*.

This positive obligation of the State must be constitutionally evaluated as a very important, but still only the *first step* in fulfilling positive legal obligations of the State from the point of view of public health. The safeguarding of the minimum standards doesn't exhaust the legal responsibility of the State in this context. While the Judiciary, an equally important and at the end of each legally relevant story also the most important “constitutional player”, should be stricter when evaluating the exercise of legal obligations of the State regarding public mental health in the systemic manner.

### **The 2020 Coronavirus Pandemic Experience**

In Europe, living conditions during the Coronavirus pandemic were hard to bear. Quite expectedly they were causing anxiety, sadness, feelings of loneliness and similar sensations of organism. Those living circumstances were especially damaging for people with depression, depressive disorder or other mental health problems. Such evaluation, even if secular on the first glance, was undoubtedly confirmed by doctors, medical scientists and other medical staff who addressed the public through the media.

The main reason was self-evident: constitutional rights to freedom of movement and socializing were limited by government decrees in all of the EU member States. In some States slightly more (Spain, Italy, Hungary, Slovenia...) in other States a little less. Even though “the state of emergency” was not officially declared in most of the EU member States (the Slovenian Constitution explicitly determines the conditions for such declaration in Art. 92 and those conditions were not fulfilled) the “exceptional” circumstances of public life had an effect as if it has been declared. In the EU member States people were living in *de facto* “state of emergency” and in quarantine (inside the national borders, in Slovenia also within the boundaries of municipalities). In the first part of officially declared pandemic people

were even not able to visit doctors and hospitals (due to other common diseases other than COVID-19), psychiatrists and psychotherapists included. For two months, more or less.

### **Frightened People Will Remain Being Frightened**

It was obvious - according to the media reports, discussions on internet forums and on the Facebook web sites - people were *very* frightened. And they will remain to be frightened, even when the end of the pandemic will be officially proclaimed. In EU member States who have proclaimed the end of the official pandemic first (Slovenia being the first, Austria and Hungary being the second) this fear, deeply rooted in people, was obvious. Many of them, especially the elderly, were still avoiding the public life and contacts with other people and not just a small number of them remained determined to wear masks. This image of the current social situation in Europe and the feelings of the people is not negligible, much less worthy of ridicule. This is a serious matter, a serious consequence of a pandemic, which must be faced with maximum seriousness, responsibility and empathy.

It is quite reasonable and legitimate that for most of the time politicians were the ones addressing the public. They took up most of the space and time in the media. Doctors, other medical staff or medical scientists were less publicly exposed. But the side effect was expected and can't be denied its legitimacy and importance. When people are frightened the possibility and predictions they will behave in accordance to the directions and official demands is higher. But, and there usually is additional "but", in such living circumstances more fear results not only in a higher percentage of obedience and respect for the rules, it also results in increased percentage of anxiety, immune system failure and in final consequence in deteriorating general public health, mental and / or physical.

Besides that, politicians all over Europe, even the representatives of the WHO, were using words, such as "we are combating the Coronavirus." And how did people emotionally and psychologically react? With an emotional and physiological response as if it were a state of war. Such a response additionally increased the mental health problems. When daily addressing the public the politicians and PR representatives of the governments were mostly citing statistical data: how many people have been tested for CIVID-19, how many of those were positive and how many people daily died –presumably just from the Coronavirus. Such was the nature of the message. With a few exemptions, no broader context was offered to the public, no detailed information about the age of those who were infected, their other and previous diseases and possible terminal illness. Pure statistics, communicated to the general public, did have, expected and logical, an effect of further increase of the fear. Especially for the elderly. As already sad, this fear didn't go away with the officially proclaimed end of the pandemic in the EU member States who were the first to officially proclaimed it. And this fear won't go away soon and easily. So, the legitimate concern it will become a new epidemic must be taken most seriously and with a high level of the socio-political responsibility.

It doesn't seem superfluous to repeat especially the elderly still refusing to go out without the masks. Even though the WHO does not recommend people wearing masks and even though quite a number of doctors publicly expressed their strong objection to wearing masks and explained the medical reasons why masks don't efficiently protect individuals against possible infection and why wearing those masks can even be quite dangerous and damaging for health of the individuals. But – people are still scared. Very scared. So they do it.

### **The Priorities of the Legal Policies Within and of the EU**

By searching through the internet one can easily and quickly conclude EU member States have their own national programs or resolutions for facing the mental health and suicide problems. The EU Commission has its own resolution for coping with these two problems. But it is not enough. I have spent some time to review the situation in this area in the EU Member States. I have also made some inquiry how the forecasts and commitments written in such documents were realised in social practice before the pandemic. I came to the conclusion that in the most of the EU member States those forecasts, commitments and “promises” given by the daily politics remained unrealized, with modest effectiveness and determination, not to say responsibility for their quality and effective systemic execution.

The same goes for the Republic of Slovenia. A special *Act on Mental Health* was enacted in late 2008. It was publicly introduced as an appropriate legal framework covering the problems of mental health and suicide prevention. But as far as the Slovenia is concerned this statute alone is nothing special. Most of the provisions concern general principles already known and written elsewhere, in other documents, such as the general doctrine of the medical profession and the Code of ethics for the work of physicians. With addition of the provisions transcribed from the Constitutional Court's judgement determining fundamental rights of individuals who are posted, by doctors or by a court decree, to Psychiatric Hospital for compulsory and involuntary treatment. Therefore, I consider such a legal Act as a general guideline for the protection of the fundamental constitutional rights of this type of patients, without the added value, which would be worth special mention.

So my conclusion on the matter is: the systemic arrangements of the mental health problem and the problem of suicide prevention remains insufficiently effective in the practice. With additional, traditionally existing problem: the deficit of professional staff, the deficit of funds guaranteed in the budget and the deficit of special capacities. Those deficits remain a fact. Inside the frame of public health system and institutions, which I strongly consider to be an absolute legal and political priority in the short-term future, this problem must not be ignored or taken as being less important.

## **Necessary Legal Deliberations for the Short-Term Future**

In the next years, by my opinion not more than three to five years, special concern should be given to the analysis and research of the legal, well more than that, *constitutional* questions and solutions regarding the mental healthcare and the suicide prevention. Mental healthcare and suicide prevention must be fully recognized as legally relevant phenomena. These challenges must be fully and publicly addressed as a matter of ethical responsibility, moral lucidity, medical priority and constitutional necessity. A constitutional principle of “social state,” which is one of the institutional features of constitutional democracies in all of the EU member States, *must* (not only “should”) be politically and legally strengthened. Not weakened. Socially, ethically, politically and legally responsible political community, as the EU is supposed to be, may not disregard this issue. Substance and scope of fundamental rights and freedoms regarding mental healthcare and the suicide prevention represent a very special, the most intimate relationship between the State and people/general public. In this context positive nature of constitutional rights must be safeguarded with more effort of the EU member States and their institutions in the field of public health systems, not with less effort. Fundamental rights and freedoms, directly or indirectly connected to the health issues, must be given more protection, not less. And the Judiciary must be stricter when deciding cases on legal acceptability of statutory solutions and the sufficiency of legal policies in this regard, not less strict. Usual and well known excuses of the daily-politics with reference to “insufficient funds” for effective confrontation with problem of mental healthcare and public health in general shouldn’t be easily accepted by Courts - as an escape from the political, constitutional and ethical responsibilities of the State.

## **Appeal to Legal Community**

Legal, especially constitutional aspects of mental healthcare and the suicide prevention represent a subject with quite some deficit in respect of scientific research and evaluation. This is my personal evaluation based on my review of information on the subject available on the Internet. This presents us (or faces us), citizens of the EU member States, with obvious and persuasive necessity to make determined and efficient steps forward. The modern social constitutional democracy, which is so highly emphasized as a fundamental feature of the EU as a whole, and the constitutional doctrine of the positive obligations of the State, enable and demand updated approaches to legal aspects of mental healthcare and suicide prevention. Expectations towards legal policies and positive legal obligations of the EU member States have to be increased and strengthened.

I emphasize and repeat once again: the mental healthcare problem and the suicide prevention problem IS a serious and too big problem of Europe. It is a fact. And this fact opens the door for most serious, determined and permanent analytical scientific approach very widely - also from the legal perspective. The LAW must be used for the purpose of reducing the number of cases of suicides *per capita* in EU

member States and for reducing the problem of different, but very present mental illness of the European population. This problem is present in current social life, it is very real and most serious.

Therefore, the legal community should and must get engaged in the process of reducing this problem, for the purpose of improving mental health of citizens of the EU member States. EU as a whole must show its capability for the production of progressive and evolving institutionalised plans and programs of psychiatry, psychotherapy, suicidology, nursing and, last but not least, palliative care.

EU Commission and European legal community should be deeply involved in forcing the member States to do much more in this context as it has been done in previous years. EU Administration must play an important role in the process of putting the member States under an effective control of responding to their political, legal and ethical duties regarding mental healthcare and suicide prevention. It is not only a matter of “some of the” human rights and freedoms. And it is not only a matter of “human dignity.” It is a matter of life and death, living and dying. It is a matter of HUMANITY. Who dares to argue against that?

### Interesting websites

- University of Primorska: [Faculty of Health Science](#)

### About the author

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