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Limitations of Patient's Right to Self-Determination Due to Hospitalization for Tuberculosis

Abstract: The subject of the article is a discussion of issues related to the limitation of patients' rights provided for in the law in the prevention and control of one of the infectious diseases – tuberculosis. The above restrictions result from the treatment of public health as a merit of higher protection than individual human rights. They are manifested in specific responsibilities of patients suffering from tuberculosis such as forced treatment and hospitalization and, therefore, despite the lack of consent or against the objection, in compliance with the injunctions and prohibitions of the State Sanitary Inspection prevents and combats infectious diseases. In this article, I present legal solutions limiting the patient's right to decide on treatment, consent or objection to health services related to the implementation of tuberculosis prevention and control tasks, thus limiting the patient's autonomy in relation to this disease. Moreover, I point to the problems arising in connection with the fulfilment of obligations in this respect.
Keywords: patient's rights, restriction of patient's autonomy, tuberculosis, obligatory hospitalization

1. Introduction

One of the fundamental constitutional rights is each individual's right to personal freedom (Art. 41 par. 1 of the Polish Constitution). However, there are exceptions thereto. The Polish Constitution admits limitations within the above scope saying that any deprivation or limitation of liberty may be imposed only in accordance with principles and under procedures specified by statute. This regulation is completed by the principle of proportionality set forth in Art. 31 par. 3 of the Polish Constitution, which specifies precisely the prerequisites thereof. Namely, the above limitations may be enacted solely by statute and only if they are necessary in a democratic state to provide its security or public order, or to protect natural environment, public health and morality, or freedoms and rights of third parties. These restrictions may not infringe the essence of freedoms and rights.

In the light of Art. 31 par. 3 of the Polish Constitution, public health is the admissible ground of restricting constitutional rights and freedoms. Currently binding provisions of law envisage several limitations of patient's rights for the above reason. Such limitations are manifested, *inter alia*, in special obligations of patients who are at a risk of developing tuberculosis as well as other people who contact them that are contained in the Act on Prevention and Counteraction of Human Infections and Infectious Diseases[1].

Art. 16 of the Act on the Patient's Rights and Patient Ombudsman[2] contained in Chapter 5 stipulates that the patient has the right to give consent for specified health services, or refuse to give such consent after obtaining information within the scope laid down in Art. 9. Pursuant to Art. 15 of the above Act, provisions of Chapter 5 are applied to consent given for the provision of health services or refusal to give such consent unless the provisions of separate Acts stipulate otherwise. Hence, a refusal to give consent for the provision of specified health services is possible solely if the exceptions set forth in other Acts do not occur. Such exceptions occur under APCHI.

2. The catalogue of obligations

The catalogue of obligations referring to individuals staying in the territory of the Republic of Poland and related to the prevention and counteraction of infections and infectious diseases has been specified in Art. 5 par. 1of APCHI. Such individuals are obliged to undergo sanitary treatment, preventive vaccination, post-exposal prophylactic use of medicaments, sanitary and epidemic examination including activities to collect or supply material to such tests, disease surveillance, quarantine, treatment, hospitalization, and isolation.

Pursuant to Art. 33 par. 1 of APCHI, in the wake of suspected or diagnosed infection or infectious disease, Poviat or Border State Sanitary Inspector is entitled to order a person at a risk of developing infectious disease, or diagnosed with infection or infectious disease, or a person who had contact with the source of biological infection agent to carry out obligations resulting from Art. 5 par. 1 of APCHI by issuing a relevant decision.

1 Act of 5 December 2008 r. on preventing and combating infections and infectious diseases in humans (consolidated text Journal of Laws 2016, item 1866, as amended (tekst jedn. Dz.U. z 2016 r., poz. 1866 ze zm.) [Ustawa z dnia 5 grudnia 2008 r. o zapobieganiu oraz zwalczaniu zakażeń i chorób zakaźnych u ludzi (tekst jedn. Dz.U. z 2016 r., poz. 1866 ze zm.)], in short u.z.c.z.l.

2 The Act of 6 November 2008 on patient rights and the patient's rights ombudsman (consolidated text Journal of Laws 2016, item 186, as amended 2016) [Ustawa z dnia 6 listopada 2008 roku o prawach pacjenta i Rzeczniku Praw Pacjenta (tekst jedn. Dz.U. z 2016 r., poz. 186 ze zm.)], in short: u.p.p.

3. Involuntary hospitalization

The most severe restriction of the patient's right of self-determination related to the prevention and treatment of tuberculosis interfering his rights and resulting in temporary deprivation of liberty is obligatory hospitalization. In case of tuberculosis, two categories of individuals are subject to obligatory hospitalization, i.e. persons developing active tuberculosis (spreading germs) and those who are reasonably suspected of lenient TB. It should be emphasized that it does not refer solely to pneumonic tuberculosis but other forms thereof too. Individuals suffering from pneumonic tuberculosis after active TB phase are not subject to this obligation (*a contrario* Art. 40 par. 1 point 1 of APCHI). Such persons are treated in open clinics, i.e. as outpatients.

As far as the first group is concerned, determination of temporary limits of obligatory hospitalization may appear problematic in practice. Although APCHI indicates that this obligation covers active TB period, unambiguous determination of this period may prove difficult[3]. Medicine points out that active TB period lasts app. two weeks. Spread of TB germs may be credibly confirmed by a microbiological test. Depending on the test method, the results may be known even after ten weeks[4]. Hence, it may be difficult to determine time limits of obligatory hospitalization in a reliable way. Since precise determination thereof is not possible, and due to the necessity of waiting for the test results and the ensuing time of waiting, actual period of hospitalization of a given individual may be longer than the duration of active TB period. However, the issue of waiting for test results depends on the present medical knowledge, which may not be contained within fixed legal framework. To improve the patient's situation, the provisions should indicate the obligation of immediate patient's discharge when the result of a microbiological test does not confirm active TB.

As far as the second group of individuals is concerned, the provision does not determine time limit of obligatory hospitalization. Nevertheless, it seems that this obligation expires when active TB is excluded. Yet, in order to determine this, it is necessary to carry out a microbiological test, which evokes the above-mentioned problems. What is more, with regard to this group of individuals, the legislator

3 Determining the infectious period of the patient was described by M. Korzeniewska-Koseła, Postępowanie wobec osób z kontaktu z chorym na gruźlicę, "Medycyna Praktyczna" 2011, No. 6, p. 34 and following.

4 E. Augustynowicz-Kopeć, Z. Zwolska, Mikrobiologiczna diagnostyka gruźlicy oraz zasady ochrony pacjentów i pracowników przed zakażeniami wywołanymi prątkami gruźlicy. Rekomendacje Polskiego Towarzystwa Chorób Płuc i Krajowej Izby Diagnostów Laboratoryjnych, Warszawa 2014 r., p. 9, http://kidl.org.pl/uploads/Rekomendacje_ Gruzlica.pdf (accessed: 2 May 2017).; Zalecenia Polskiego Towarzystwa Chorób Płuc dotyczące rozpoznawania, leczenia i zapobiegania gruźlicy u dorosłych i dzieci, "Pneumonologia i Alergologia Polska" 2013, t. 81, No. 4, p. 339.

requires that the suspicion of active TB be justified. It is not required with reference to individuals suspected of developing other diseases such as, e.g., diphtheria, cholera or typhoid, who are also subject to obligatory hospitalization (Art. 34 par. 1 point 2 of APCHI). The doctrine has accurately noticed that such distinction is not reasonable[5].

The above patients are admitted to hospital following different procedures; that is:

1) on the basis of a doctor's referral or without a referral if the patient's health or life is endangered, or
2) on the basis of an administrative decision issued by a sanitary inspector.

In order to fulfil the discussed obligation, when tuberculosis is suspected or diagnosed, a doctor or physician are obliged to instruct the patient about obligatory hospitalization and refer him or her to hospital, and inform State Poviat Sanitary Inspector competent for the place where infection or infectious disease have been diagnosed, who is authorized to undertake action to make the patient undergo treatment. Voluntary hospitalization does not arise complications connected with the fulfilment of the above obligation in the discussed situations. The problems arise when this obligation is fulfilled against the patient's will.

Then, not only the patient's right to consent to medical treatment is restricted but also his or her right to choose the hospital resulting from Art. 30 of the Act of 27 August 2004 on Healthcare Services Financed from Public Funds[6] as these persons should be admitted to the hospital assuring efficient isolation. In practice, these will mostly be specialist hospitals treating tuberculosis. Such restriction does not ensue from the above provision unambiguously. Nevertheless, it is more important here to guarantee efficient isolation and proper treatment taking into account public interest rather than individual's right and patient's right to choose the hospital. However, it is difficult to approve of the opinion presented in the literature[7] saying that "a doctor should arrange the place of patient's hospitalization and organize his or her transport to the proper medical facility"[8]. According to the definition contained in Art. 5 point 38 of AHSF, sanitary transport is an accompanying service that may be used solely in cases specified in the Act. These cases are set forth in Art. 41 of the above mentioned Act. The discussed case is not one of them. Undoubtedly, however, it does not help to achieve the purpose, i.e. protection of public health. The

5 A. Augustynowicz, I. Wrześniewska-Wal, Ograniczenie autonomii pacjenta w diagnozowaniu i leczeniu gruźlicy, "Pneumonologia i Alergologia Polska" 2013, t. 81, No. 2, p. 132.

6 Act of 27 August 2004 on health care services financed from public funds (Consolidated text Journal of Laws 2016, item 1793, as amended [Ustawa z dnia 27 sierpnia 2004 r. o świadczeniach opieki zdrowotnej finansowanej ze środków publicznych (tekst jedn. Dz.U. z 2016 r., poz. 1793 ze zm.)], in short u.ś.o.z.

7 As rightly see: T. M. Zielonka, Prawne aspekty diagnostyki i leczenia gruźlicy, "Pneumonologia i Alergologia Polska" 2013, t. 81, No. 2, p. 90-91.

8 A. Augustynowicz, I. Wrześniewska-Wal, Ograniczenie …, *op. cit.*, p. 133.

law, however, does not impose such obligations on doctors and therapeutic entities while the nature of a disease may not justify the extension of their obligations beyond statutory regulations. Nevertheless, it is hard not to agree with the statement saying that it is difficult to accept the situation when an active TB patient, or the one who is credibly suspected of it should decide himself or herself in which hospital they are going to undergo obligatory treatment and arrange transport thereto themselves. It does not help to achieve the purpose of the fulfilment of the obligation to undergo hospitalization and restrict contacts between active TB carriers and others as much as possible (as this person could use public transport to get to the hospital, which should not take place). Hence, valid provisions within the above scope need to be improved. It is necessary to introduce such obligations which will embrace the above situation in the list of cases when a patient is entitled to free sanitary transport.

4. The right to appeal to the court

The fulfilment of obligatory hospitalization *de facto* leads to the infringement of Art. 41 of the Polish Constitution resulting from Art. 31 thereof and being *lex specialis* thereto, i.e. the right of every human to freedom. Although Art. 41 par. 1 of the Polish Constitution enshrines a possibility of deprivation or limitation of liberty, but solely upon the principles and under the course envisaged by the statute. This regulation is completed by previously mentioned (in the introduction) Art. 31 par. 3 of the Polish Constitution. Obligatory hospitalization leads to the deprivation of human personal freedom[9]. Deprivation of liberty related to obligatory hospitalization must satisfy the test of proportionality mentioned in Art. 31 par. 3 of the Polish Constitution[10].

Furthermore, the Constitution enshrines that every person deprived of liberty not on the basis of a judicial ruling has the right to appeal to a court in order to promptly determine the legality of this deprivation. This right does not imply any specific measure or legal institution but only a mechanism which must be implemented each time[11].

9 P. Wiliński i P. Karlik wskazują na podobny, szczególny rodzaj pozbawienia wolności, jakim jest przymusowe umieszczenie osoby w szpitalu psychiatrycznym bez jej zgody na podstawie art. 23 ustawy o ochronie zdrowia psychicznego, P. Wiliński/P. Karlik (in:) M. Safjan, L. Bosek (ed.), Konstytucja RP. T. I, Komentarz, Warszawa 2016, p. 998; podobnie L. Garlicki, Polskie prawo konstytucyjne. Zarys wykładu, Warszawa 2014, p.108; see also the verdict of the European Court of Human Rights of October 16 2012 in the case *Kędzior v. Polska*, no .45026/07.

10 A. Ławniczak, Zasada poszanowania wolności i jej ograniczenia, (in:) M. Jabłoński (ed.), Wolności i prawa jednostki w Konstytucji RP. Idee i zasady przewodnie konstytucyjnej regulacji wolności i praw jednostki w RP, Warszawa 2010, T. I, p. 392 and following.

11 See: P. Wiliński nP. Karlik. (in:) Konstytucja…, *op. cit.*, p. 1001; P. Sarnecki indicates that the appeal is not a descriptive term, it does not have to be so titled and does not even have to be in written form, (in:) L. Garlicki, M. Zubik (ed.), Konstytucja Rzeczypospolitej Polskiej. Komentarz, t. II, Warszawa 2016, p. 217.

This issue is also related to the right to a trial envisaged in Art. 45 of the Polish Constitution[12] which, as explained in the Constitutional Tribunal's case law, encompasses in particular:

1) the right to a trial, i.e. the right to initiate litigation before the court;
2) the right to a proper course of judicial procedure in compliance with the requirements of justice and openness;
3) the right to a ruling, i.e. the right to obtain binding resolution of the case by the court[13].

It results from Art. 37 par. 1 of APCHI that a person subject to hospitalization is not deprived of the right to refuse to consent to undergo health services. The refusal to give consent, however, does not effect in the withdrawal from hospital treatment but merely ensues the obligation to inform the patient about measures of appeal he or she is entitled to (Art. 39 par. 2 of APCHI). If a patient does not give consent to hospitalization, APCHI obliges the head of a therapeutic entity where the patient is placed to inform him or her about measures of appeal he or she is entitled to. However, APCHI provisions do not determine what these measures of appeal are and do not regulate appellate proceedings in this case, in particular litigation before a court. Thus, they do not protect the right of the patient subject to obligatory hospitalization in discussed circumstances required by Art. 41 par. 2 of the Polish Constitution. This regulation arises reservations.

If hospital treatment is grounded upon an administrative decision issued by a sanitary inspector, it seems that the patient should be additionally instructed about the right and manner of appeal against this decision (the instruction is also contained in the administrative decision). The proceedings themselves connected with the examination of appeal would be carried out pursuant to the provisions of the Act of 14 June 1960 – the Code of Administrative Procedure[14]. However, it is not an appeal that may be submitted with a court. Meanwhile, the requirement to provide such a guarantee ensues from the Polish Constitution and, as pointed out by the Constitutional Tribunal in the judgment of 10 July 20017 (SK 50/06)[15], statutory regulations that may be the grounds of deprivation of liberty must be precise and

12 B. Banaszak, Konstytucja Rzeczypospolitej Polskiej. Komentarz, Warszawa 2009, p. 224.

13 Judgment of the Constitutional Tribunal of 11 June 2002, SK 5/02 (Journal of Laws 2002, No. 84, item 763) [Wyrok TK z dnia 11 czerwca 2002 r., SK 5/02, Dz.U. 2002, nr 84, poz. 763].

14 The Act of 14 June 14 1960 - Code of Administrative Procedure (consolided text Journal of Laws of 2016, item 23, as amended), [Ustawa z 14 czerwca 1960 r. – Kodeks postępowania administracyjnego (tekst jednolity Dz.U. z 2016 r., poz. 23 ze zm.)], in short k.p.a.

15 The Judgment of 10 July 2007 SK 50/06, Dz.U. Nr 128, poz. 903 [Wyrok z 10 lipca 2007 r., SK 50/06, Dz.U. Nr 128, poz. 903] with justification available at otk.trybunal.gov.pl/orzeczenia/teksty/otk/2007/SK_50_06.doc (accessed: 2 May 2017).

protective against excessive limitation of liberty. Current regulations are far from satisfying these requirements.

It is worth considering the regulation which was contained in the previously binding Act of 6 September 2001 on Infectious Diseases and Infections[16]. In the discussed situation, Art. 30 par. 3 thereof obliged a head of a unit to inform the patient about his or her right to appeal to a court in order to promptly determine the legality of deprivation of liberty and enable him or her to appeal to a court. Although this Act lacked procedural provisions regulating the procedure of litigation, for the reasons not revealed in the justification to the new Act on Preventing and Counteracting Human Infections and Infectious Diseases, this provision has a different reading.

Moreover, binding APCHI does not contain solutions similar to those included in the Act of 19 August 1994 on Mental Health Protection[17], i.e. regulation imposing the obligation of obtaining patient's consent for admission to hospital and determining a manner of controlling the legality of such admission in litigation. The guardianship court's control performed in effect of an individual having been admitted to psychiatric hospital under Art. 25 of the Act on Mental Health Protection is presented as a special case of just such control. In this case, the court assesses the grounds for the admission of an individual to psychiatric hospital and orders his or her immediate discharge if they are not found[18].

It should also be noticed that binding provisions of APR and the Act of 5 December 1996 on the Profession of a Physician and Dentist[19] do not introduce the obligation of obtaining patient's consent for hospitalization (except psychiatric hospital) but for the provision of health services. Admission to hospital itself is not the provision of health services but it occurs just for this purpose. It is sometimes preceded by the provision of health services in hospital and in some cases (scheduled admissions) it is not related to prior information about health condition conveyed by a doctor in hospital at admission but earlier, in a manner and scope required by the law.

Legal regulations should determine instruments allowing to pursue prompt control (review) of the legality of deprivation of liberty. Time is of considerable importance here from the perspective of individual's rights, and it should be short. Time limits to examine cases provided in the Code of Administrative Procedure do not guarantee fast pursuit of such control, and they refer to treatment undergone on

16 Ustawa z dnia 6 września 2001 r. o chorobach zakaźnych i zakażeniach (Dz.U. Nr 126, poz. 1384).

17 Act of 19 August 1994 on the protection of mental health (Consolidated text Journal of Laws 2016, item 546, as amended)[Ustawa z dnia 19 sierpnia 1994 r. o ochronie zdrowia psychicznego (tekst jedn. Dz.U. z 2016 r., poz. 546 ze zm.)].

18 P. Wiliński, P. Karlik, (in:) Konstytucja…, *op. cit.*, p. 1001.

19 Act of 5 December 1996 on the professions of a doctor and a dentist (consolidated text Journal of Laws 2017, item 125 as amended) [Ustawa z dnia 5 grudnia 1996 r. o zawodach lekarza i lekarza dentysty (tekst jedn. Dz.U. z 2017 r., poz. 125 ze zm.].

the basis of an administrative decision. Even though pursuant to Art. 35 § 1 of CAP, public administrative authorities are obliged to examine cases without unnecessary delay while Art. 35 § 2 of CAP sets a maximum monthly limit to examine a case, this time limit should be recognized as absolutely too long to guarantee patients the right to control the legality of deprivation of liberty. What is more, it is not judicial but administrative control. In the judgment of 2 June 1999, the Constitutional Tribunal[20] ruled that the right to a trial is preserved under such regulations which assure judicial control of a ruling, decision or other individual act shaping the subject's legal situation through the initiation of proceedings before a common or administrative court. Despite this, remoteness of control of the decision of a sanitary inspector by an administrative court makes the objectives of such control impossible to achieve.

Binding regulations do not determine mechanisms of judicial protection against unreasonable hospitalization and thus ensuing unreasonable deprivation of personal liberty. The need to provide protection in case of deprivation of liberty results directly from the Polish Constitution, which was further underlined by the Constitutional Tribunal in the judgment of 10 July 2007 (SK 50/06)[21]. The Constitutional Tribunal's case law has also pointed out that statutory regulations which may be the grounds of deprivation of liberty must satisfy the highest requirements, in particular with regard to their preciseness[22]. Binding regulations must be improved within this scope by the introduction of precise mechanisms of fast and efficient judicial control over the fulfilment of obligations related to obligatory hospital treatment and the legality of deprivation of liberty in such cases.

Hence, biding APCHI must be amended by the introduction of a possibility of appealing (regardless of its name) and specification of the procedure (referral to the provisions of out-of-court proceedings) connected with its initiation and examination. Actual protection would be guaranteed if such an appeal measure could be lodged through the entity where the patient is staying if a real possibility of serving correspondence directly to the patient in hospital was assured (upon which the entity providing the patient with health services is allowed to give information about him or her). Furthermore, an essential element of such protection is assuring the patient's right to be heard. Taking into account the grounds of obligatory hospitalization and the need to isolate the patient from other individuals who could be infected by him or her, the patient should be obligatorily heard in the place of his or her stay. Transporting him or her to a court for this purpose should also be out of the question.

20 The judgment of Constitutional Court of 2 June 1999, K 34/98, Journal of Laws No. 86, item 964 [Dz.U. Nr 86, poz. 964].

21 The judgment of Constitutional Court of 10 July 2007, SK 50/06, Journal of Laws No.128, item. 903 [Wyrok TK z 10 lipca 2007 r., SK 50/06, Dz.U. Nr 128, poz. 903], otk.trybunal.gov.pl/orzeczenia/teksty/otk/2007/SK_50_06.doc (accessed: 2 May 2017).

22 The judgment of Constitutional Court of 24 July 2006, Journal of Laws No. 141, item 1009 [Dz.U. Nr 141, poz. 1009].

It is also important to determine a group of people, apart from the patient, who also participate in this procedure. Participation of a prosecutor representing public interest seems reasonable here. It also appears reasonable for the entity admitting the patient to hospital to participate in the proceedings as they will also control the manner of this entity's conduct.

However, we should also pay attention to the fact that the introduction of appellate procedure to APCHI, as required by the Polish Constitution, could entail a double nature of review (control) proceedings under currently adopted solutions with regard to hospitalization based on a sanitary inspector's decision. This could lead to the situation when in effect of the appeal, a common court would decide that deprivation of liberty was unlawful and thus would order the patient's discharge from hospital. Meanwhile, the sanitary inspector's decision on obligatory hospitalization would become final and binding (due to the lack of challenge, or rejected appeal). Despite the common court's ruling on the hospitalization unlawfulness, the administrative decision would be enforceable under administrative execution proceedings. The court ruling and administrative decision would be contradictory, which cannot occur. This problem could be solved by the introduction of one judicial appellate procedure and a limited possibility of applying measures of challenge under administrative proceedings. However, this issue is debatable due to the right to challenge decisions and rulings enshrined in Art. 78 of the Polish Constitution as well as limited possibilities of implementing exceptions thereto. It seems that the best solution preventing the occurrence of such collision and concurrently assuring the above-mentioned guarantees is depriving a sanitary inspector of the power to impose obligatory hospitalization on a specific individual by the issue of an administrative decision. Instead, a sanitary inspector would be obliged to apply to a guardianship court for the issue of a ruling ordering such a person to undergo treatment. The grounds justifying obligatory hospitalization of a specific person could be verified already at this stage. Such a ruling should be immediately enforceable. However, the patient should be entitled to challenge it. Thus, judicial control of the legality of deprivation of liberty would be assured and legal transactions would not contain contrary resolutions of administrative authorities or administrative courts and common courts.

5. Conclusion

Valid legal regulations considerably limit the patient's right to decide about his own health and personal freedom in specific situations. They focus more on public health protection and the need to prevent and counteract infectious diseases. This assumption is right but individual rights cannot be ignored too. Restricting the patient's personal freedom, it is particularly important to concurrently provide

him or her with appropriate measures (instruments) to control regularity of applied restrictions in compliance with the requirements enshrined by the Polish Constitution. Regulations contained in APCHI should, by all means, introduce such guarantees within the scope of obligatory hospitalization.

One of the weaknesses of current regulations is a failure to regulate issues connected with providing patients subject to the discussed obligatory hospitalization with sanitary transport to the competent hospital and restriction of the patient's right to choose a medical service provider. In order to assure proper regulation thereof, it is necessary to oblige the entity referring the patient to hospital to find appropriate facility guaranteeing efficient isolation, provide sanitary transport there and oblige the patient to use this transport while explicitly limiting the right to choose the hospital to carry out the treatment. At the same time, the entity referring the patient to hospital should be obliged to search the hospital located as close to the patient's place of residence as possible.

Practical problems may arise with regard to the time of waiting for the result of a microbiological test confirming or not the fact of active TB period, which affects duration of hospitalization. These problems will concern individual cases and they are connected with the choice of microbiological methods of diagnosing tuberculosis, therefore they are related to the sphere of medical knowledge. Nevertheless, intending to improve the patient's situation, it would be purposeful to formulate an explicit order upon which the patient shall be immediately discharged from hospital if active TB is not confirmed.

However, the most essential point of the analyzed issue is the introduction of mechanisms of judicial control of the legality of deprivation of liberty. This control must concern not only the legality of a decision on deprivation of liberty itself but its prerequisites and the course of issuing it including a manner of its implementation, and in particular duration of deprivation of liberty[23]. Administrative control which may be currently launched upon the patient's initiative regards only hospitalization based on an administrative decision. It is merely limited to a possibility of appealing against this decision. A drawback of this solution, however, is the fact that the time of examining the appeal against this decision may appear too long to assume that the right to personal freedom is sufficiently protected. It is not judicial control enshrined by the Polish Constitution too.

It is particularly important to develop the course of proceedings connected with the launch and examination of such an appeal (regardless of the name adopted for this measure) that would actually provide the patient with a possibility of taking advantage of the protection he or she is entitled to despite his or her factual isolation. Such regulations should also oblige the court to examine the appeal within strictly

23 The judgment of the Constitutional Tribunal of 11 June 2002, SK 5/02, Journal of Laws 2002, No. 84, item 763 [Dz.U. 2002, nr 84, poz. 763].

specified and short time (the Constitutional Tribunal has depicted the need to assure such guarantees in the above mentioned case law), and thus ensure the guarantee of the court's prompt response through ordering immediate discharge of the patient if his or her hospitalization has been proved unreasonable (unjustified).

In conclusion of the above considerations, currently binding provisions should be completed by adding regulations concerning several issues vital for the assurance of proper protection of personal freedom of the patient obliged in above mentioned cases to undergo treatment in closed medical facilities. Nevertheless, such regulations should concurrently encompass the need to prevent spreading of such a dangerous infectious disease as tuberculosis.

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