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INTEGRITY: PERSONAL

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In the given article we analyze the problem of Personal integrity which is a central notion of the modern Bioethics. The vocabulary for designation it has different connotation in law, in philosophy and in physiology. Actually many national, regional and international bioethical and legal documents provides and protect personal integrity, but its factual protection remain unsatisfied. In the article we analyzed also the types of personal integrity (physical, mental), as well the problems of autonomy, responsibility, violations, human vulnerability, compulsory treatment.

Keywords: Personal integrity, Human Rights, Responsibility, Autonomy, Human Vulnerability, Violations.

ЛИЧНАЯ НЕПРИКОСНОВЕННОСТЬ

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В данной статье анализируются вопросы, связанные с неприкосновенностью личности, которая считается одной из центральных проблем современной биоэтики. Неприкосновенность личности имеет разный дополнительный смысл в юриспруденции, философии, физиологии и т.п. В настоящее время многие, в том числе региональные, национальные и интернациональные биоэтические и юридические документы стремятся обеспечить (и иногда обеспечивают) защиту личной неприкосновенности, однако реальная, фактическая защита остается неудовлетворенной. В статье анализируются также типы личной неприкосновенности (в разных странах), проблемы насилия, уязвимости, автономии, прав и ответственности личности.

Ключевые слова: личная неприкосновенность, автономия, ответственность, права, уязвимость личности, типы неприкосновенности.

Personal integrity is person's physical inviolability that permits to make decision in autonomy manner any issue relating to his or her own physical body. Personal integrity implies such trustworthiness and incorruptibility that person is incapable of being false to a trust or covenant. Personal integrity if ability not be subjected to scientific, medical and other experiments without persons' consent. The violation of right to personal integrity is infringement as a violation of personal autonomy. The terms 'bodily integrity', 'integrity of the individual' and 'physical and mental integrity' are simultaneously used.

The word "integrity" comes from the Latin integritas, which means to be whole. The wholeness implied by bodily integrity not merely means physical wholeness with borders intact. Personal or body integrity means that the body has physical and legal borders. The protection of human body does not cease after the death of person. It is known two type of personal integrity, physical and mental. Physical integrity presents a human body in his corporal edges. The respect of physical integrity involves the right to life, right to respect for the body. This corporal worthiness cannot be trespass without consent. The protection of medical score is integral part of physical integrity. Conversely, mental (psychological) integrity requires the respect of individual belief, positions and concepts. The mental integrity involves rights to dignity, right to control of use of their image and to maintain their privacy. The mental integrity is violated in case of disrespectful medical treatment. This violation of mental integrity can be found in case of lack of seriousness toward patients' cultural, social and religions convictions. Therefore, mental integrity can be violated without violating the body integrity. However, the mental integrity is considered violated in case of violation of body integrity

too. Historically the Personal integrity with right to respect of human dignity became the central right only after Second World War. First physical borders of human being was protected against illegal arrest by Habeas Corpus. In the twentieth century the relationship between consent and Personal Integrity has been overlapped. Especially since the Bosnian genocide have relied heavily upon a new understanding of relationship between consent and Personal integrity [2,3].

The philosophically sense of the term 'Personal integrity' relates to general character Personal integrity is attributed to various parts or aspects of a person's life such as professional, intellectual and artistic integrity. Personal integrity involves two fundamental intuitions: first, that integrity is primarily a formal relation one has to oneself, or between parts or aspects of one's self; and second, that integrity is connected in an important way to acting morally, in other words, there are some substantive or normative constraints on what it is to act with integrity. In the psychology, Personal integrity is the characteristic of behaving and thinking congruently with one's personal values and beliefs. Simply saying, Personal integrity is doing what person believe to be right, irrespective of the costs, downside, and hardships involved. Therefore, Personal integrity refers to a quality of a person's character. Personal integrity known also as bioethical value and a principle of bioethics that is setting out in legislations of various countries and in the international and regional legal documents. Personal integrity is underpinning right of Human Right Law which is even considered above the Law.

In legal sense, Personal integrity has double, internal and external, aspects. Internal aspect consists of the personal autonomy to make decision on his body issues and take responsibility for made decisions and self-determination of human beings over their own bodies. In another words any preventive, diagnostic and therapeutic medical intervention or scientific research is only to be carried out with the prior, free and informed consent of the person concerned. External aspect consists of humans physical body's inviolability which other person should respect and not attempt to the P.I of the inviolability of the physical body and.

The capacity of being liable or taken decisions is one of attributes of personal integrity. It make the patients feel legally and morally liable for all taken decisions with

assuring the safety of practitioners in case of failure of desirable curing result. One of the major aims of the principle of respect for Personal integrity is mitigation of the progress of science in the bioethical domain with putting out human body out of commerce. At first, principle of respect for Personal integrity aims to protect those who are especially vulnerable because of age, kind of disease, lacking access to health care due to the health care system of their country, their own education or education of physicians and researchers, etc.

Among international treaties, the personal integrity is set out in the Universal Declaration on Bioethics and Human Rights. Article 8 of UDBHR provides *in applying and advancing scientific knowledge, medical practice and associated technologies, human vulnerability should be taken into account. Individuals and groups of special vulnerability should be protected and the personal integrity of such individuals respected.* The right to bodily integrity is not specifically recognized under The Universal Declaration on Human Rights, the International Covenant on Civil and Political Rights or International Covenant on Economic, Social and Cultural rights, although it has been interpreted to be part of the right to security of the person (ICCPR 9), the right to freedom from torture and cruel, inhuman, and degrading treatment (ICCPR 7), the right to privacy (ICCPR 17), and the right to the highest attainable standard of health (ICESCR 12). UN Convention on the Rights of Persons with Disabilities, every *person with disabilities has a right to respect for his or her physical and mental integrity on an equal basis with others*

In European level EU Charter of Fundamental Rights provides the right to the integrity of the person. According to Article 3 everyone has the right to respect for his or her physical and mental integrity. Contrary to the EU Charter, European Convention on Human Rights don't specifically set out the term personal integrity, although European Court of Human Rights finds out that a person's boys concerns the most intimate aspects of one's private life (Y. F. v. Turkey) so there are clear links between the right to privacy and the right to bodily integrity. The right to bodily integrity is not specifically recognized under the ECHR, but it has been interpreted to be part of the right to security of the person (ECHR 5), the right to freedom from torture and cruel, inhuman, and degrading treatment (ECHR 3), the right to privacy (Art. 8), and the right to the highest attainable standard of health (Art. 11). The ECtHR

has found in relation to Article 8 of the ECHR that a person's body concerns the most intimate aspect of one's private life. It has gone on to hold that a breach of physical and moral integrity occurred when diamorphine was administered to a son against his mother's wishes and a DNR (Do Not Resuscitate) order was placed in his records without his mother's knowledge.

The protection of private life under article 8 ECHR encompasses a person's physical and mental (psychological) integrity. A person's body is an intimate aspect of his or her private life (*Y.F v Turkey*) and a sound mental state is an important factor for the possibility to enjoy the right to private life. Measures which affect the physical integrity or mental health have to reach a certain degree of severity to qualify as an interference with the right to private life under Article 8. However, the Court has also held that even minor interferences with a person's physical integrity may fall within the scope of article 8 if they are against the person's will. As far as the physical integrity is concerned, the scope of article 8 overlaps with the ambit of article 3 ECHR. As pointed out above, the Court distinguishes the fields of application of these two provisions according to the gravity of the interference. While it considers article 3 *lex specialis* if grave interferences with a person's well-being are in question, the right to private life comes into play when the interference does not reach the threshold required to qualify it as torture or inhuman treatment.

Administering medicine against the will of the patient or performing medical treatment interferes with the right to private life. Therefore, it has to be based on a law and necessary in a democratic society to be justified. Medical treatment against a person's will is an interference with the right to private life. However, such interference may be justified in the interest of the affected person, for example for purposes of health protection. The right to self-determination was not inherent to article 8 ECHR and that this right does not include the right to decide when to end one's life. Moreover, the right to private life does not encompass the right to obtain assistance to end one's life. The ECtHR constantly rejected also that article 8 ECHR entailed a positive obligation for contracting states to facilitate access to medication which would enable persons to commit suicide without unnecessary pain.

Article 8 ECHR entails a positive obligation on the part of the state to protect the physical integrity of persons within their jurisdiction. As it is generally the case with positive obligations, the scope of the duty to safeguard the physical integrity of persons within the jurisdiction of the contracting states is not clearly defined. While the European Convention on Human Rights has to be applied in such a way as to provide effective rights, the states must not be burdened with disproportionate duties. The Court balances the individual's interest in the protection of the physical well-being with the interest of the general public. Factors which the ECtHR considers when striking this balance are for example the area of life concerned and the impact it has on the life of the applicant if the state fails to act and the existence of an international consensus regarding a certain question. The Court also takes into account whether the positive obligation in question is clear-cut or rather broad.

English courts have considered whether the compulsory treatment of a mentally competent patient has the potential to breach Articles 8 and 3 of the ECHR (even if the proposed treatment complies with the legislative requirements). Relevant factors include the consequences of the patient's not receiving the proposed treatment, the treatment's possible side effects, and the potential for less invasive options. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment has stated that every competent patient should be given the opportunity to refuse treatment or any other medical intervention. Any derogation from this fundamental principle should be based upon law and should only relate to clearly and strictly defined exceptional circumstances. Similarly, the US Constitution does not contain any specific provisions regarding the right to personal integrity. However, the US Supreme Court has upheld rights to privacy that protects rights to bodily integrity.

The Court of Justice of European Union examines personal integrity always in conformity with the EU data protection legislation. In France the principle of human body's unavailability (*indisponibilité du corps humain*) have been specified in French Civil Code in 1994 in term that 'everyone has the right to respect for his body; the human body is inviolable; the human body, its elements and its products may not form the subject of a patrimonial right (Article 16-1). Moreover, the respect for human bodies

does not cease with death [1]. According to the French law, nobody may invade the integrity of mankind. The respect for human body means that there may be no invasion of the integrity of the human body except in case of medical necessity for the person or exceptionally in the therapeutic interest of others. The consent of the person concerned must be obtained previously except when his state necessitates a therapeutic intervention to which he is not able to assent. Otherwise, any eugenic practice which aims at organizing the selection of persons or any intervention having the purpose of causing the birth of a child genetically identical to another person alive or dead are forbidden. Without prejudice to researches aiming at preventing and treating genetic diseases, there may be no alteration of the genetic characters with a view to changing the descent of a person.

Human vulnerability and personal integrity, the other essential concept evoked in Article 8, relate to each other. When a part of our body is inappropriately 'touched' (this is the meaning of the ancient Latin verb from which the noun 'integrity' stems), our life itself, or at least our health, may be threatened. When our freedom is hampered, either by adverse circumstances or by the actions of others, we experience a "wound" to our identity, to its value and dignity. Preservation of integrity implies protection against these kinds of intrusions, the capacity to "say no" to any sort of impingement upon our freedom or to any sort of exploitation of our body and our environment. We are nonetheless committed at least to seek to ameliorate the effects of harms and disadvantages imposed by circumstances. This is a prerequisite of human flourishing and self-fulfillment. Only in the circumstances or by the actions of others Right to personal integrity is specified in Yogyakarta principles and the Convention on Rights of Persons with Disabilities. The Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity is a set of principles relating to sexual orientation and gender identity, intended to apply international human rights law standards to address the abuse of the human rights. The Preamble acknowledges human rights violations based on sexual orientation and gender identity, which undermine the integrity and dignity establishes the relevant legal framework, and provides definitions of key terms [6].

The Convention on the Rights of Persons with Disabilities intended to protect the rights and dignity of

persons with disabilities. According to Article 17 of mentioned Convention, every person with disabilities has a right to respect for his or her physical and mental integrity on an equal basis with others [4, 5].

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THE CONTROVERSY OVER THE NEUROLOGICAL CRITERION IN CONTEMPORARY CHRISTIAN BIOETHICS

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The rapid development of medical technologies are foregrounded reflection on fundamental philosophical themes, and especially the theme of death. The relationship between Christian philosophy and the so-called «brain death» or neurological criteria is under investigation. The author focuses on the specifics of certitude that underlies the Christian interpretation of neurological criteria. It deals with the connections of neurological criterion to one of the main notion of the Christian philosophy of the rational soul as the form of the body. Having considered the different points of view, the position of proponents of neurological criteria is found to provide good philosophical and ethical grounds.

Key words: brain, consciousness, soul, body, death, Christian philosophy, neurological criterion.

СПОРЫ ВОКРУГ НЕЙРОЛОГИЧЕСКОГО КРИТЕРИЯ В СОВРЕМЕННОЙ ХРИСТИАНСКОЙ БИОЭТИКЕ

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Стремительное развитие медицинских технологий актуализирует рефлексию над фундаментальными философскими темами, одной из которых является тема