INTERFERENCE WITH LIBERTY, PRIVATE LIFE AND LEGAL CAPACITY OF A MENTALLY DISABLED PERSON AND THE EUROPEAN CONVENTION ON HUMAN RIGHTS

Shaista Naznin[i], Muhammad Zubair[ii] and Sadia Khattak[iii]
Department of Law, Abdul Wali Khan University, Mardan, Pakistan.
Contact: : mzubair@awkum.edu.pk

ABSTRACT*: *"My Goal Is To See That Mental Illness Is Treated Like Cancer." Jane Pauley
Disability, mental disability in particular, was not broadly acknowledged as a human rights issue, till recent times, though disability does not bar a person from the meaning of humanity. The only solution to it was the medical and charity models of disability. The important reason for the development of mental health laws containing human-rights features is the earlier and continuing violations of these rights.
The paper observes the frequent abuses of human rights of mentally disabled persons in Central and Eastern Europe in case when they are stripped of their legal capacity and liberty resulting in a kind of civil death.
It will analyze few cases that how domestic, regional and international legislation has not always been proved helpful to interpret the very basic rights of individuals with mental illness. It is to analyze the task of the "European Court of Human Rights (ECtHR),"under the convention, to review the decisions of the domestic courts. With a leading role among three regional courts and visible developments in case laws in mental disability, ECtHR has remained subject to many objections, particularly its interpretation of the recent "United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)."

KEY WORDS: Liberty, Disability, Human Rights, Mental Health, Legal Capacity, Legislation.

INTRODUCTION:

"I became insane, with long intervals of horrible sanity." Edgar Allan Poe

Health is a basic human right. Mental illness is a unique problem that influences the very basic faculty of human beings. The World Health Organization reports that "mental disorders account for a high proportion of all disability adjusted life years (DALYs) lost, and this burden is predicted to grow significantly in the future" [1]. What adds further to this situation is that Law and psychiatry are two disciplines which have been existed in a relation of mutual antagonism.

Guardianship and custody has been only societal response and solution to adult mental health problems and incapacity issues for over 500 years [2]. Guardianship of an 'incapacitated individual' has remained subject to many objections for its resulting hostility and disadvantage to the protected persons (mentally disabled person here).Mental incapability, the imposition of guardianship laws and detention have destructive and unpleasant effects widely affecting the capacity and autonomy of a mentally disabled person.

To guard the rights of mentally ill persons, legislation of mental health laws can be a useful and effective tool to ease one's access to the availability of mental health care on one hand and to protect and promote the human rights of persons with mental illness on the other hand. The aim to enact and develop mental health laws is to warrant the liberty and autonomy of the marginalized class of persons with mental disability, which is not always and easily achieved.

Changes and reforms in Guardianship laws have been struggled throughout the 1970s and 1980s [3]. However, the existence of laws -for protection of mental health of individuals- does not in itself promise the respect and protection of human rights. It is ironical to note that, in some countries where mental health legislation is old with no review for many years, it has resulted in abuse, rather than enforcement and promotion, of human rights of this marginalized class [4].

When the ECtHR decided *Winterwerp* in 1979, it was generally expected that states would adopt the position of the Court. This was to make sure the bare minimum procedural rights in all trials of involuntary confinement. Even the latest and recent case law of the Court, unluckily, (Lashin v. Russia, 2012) points towards what had already been decided in Stanev and Shtukaturov. It shows that no significant change has been made (at least in case of some countries), and the Court often has to touch the same issues raised, discussed and decided already in 1970s [5]. As far mental disability case law is concerned, ECtHR has only begun to deal with (notably in the case of *Varbanov v. Bulgaria 2000*), the complicated legal frameworks, governing mental disability law in Central and Eastern European countries [6].

Mental health legislation, therefore, is required to be enacted and expanded in the light of human rights framework provided by the recent "United Nations Convention on the Rights of Persons with Disability" particularly when a person is entangled in the complex web of laws and needs to secure his right to liberty and legal capacity. ECtHR had for the first cited the UNCRPD in 2009 [7].

1: Mental Illness, Legal Capacity and Guardianship within Domestic and Regional Human Rights Law Framework:

***"I haven't gone completely insane, but it might happen soon"* Megan Fox**

Litigation plays a significant role to highlight the wrongs in guardianship systems, and opens up new areas for advocacy, promotion and law reforms. Different laws are followed in different jurisdictions. When it comes to legal capacity, it is the right recognized by both international and domestic laws. The denial of this right means that the person is deprived of his right to be recognized everywhere as a person before the

law which is guaranteed in Art 16 of the "International Covenant on Civil and Political Rights (ICCPR)" corresponding nearly to Art 6 of the "Universal Declaration of Human Rights (UDHR)."

Recognition of legal capacity is a crucial feature of freedom and represents an essential prerequisite for the enjoyment and actual exercise of all other individual rights .Guardianship laws are broad to the extent of vagueness which results in easy deprivation of someone of his/her legal capacity with no or little access to justice. Two approaches to legal capacity are still in existence in Europe although they are rejected by international human rights law [8].

i) "Status-based approach in which a medical diagnosis of a mental illness forms the basis for removing legal capacity" and

ii) "An outcome-based approach which makes use of psychiatric assessments in order to make the person's decision-making process and power doubtful."

What is common between above two rules is to deprive one of his/her decision-making power rather than provide support to those who may need assistance [9]. The main legal barrier in this regard is that a person, if deprived of legal standing, can't bring cases. It blocks the opportunity to start any legal action, including an action to have their capacity restored. ECtHR, referencing to the right of access to a court, examines the potential violation of "Article 5(4)" independent of "Article 5(1)" of the Convention by setting the absolute minimum standard for a judicial procedural review. The required is the absolute minimum for judicial procedural guarantees. The Court defined it as the right of the individual to be able to present his own case, to be heard and to challenge the social and medical evidence (as in Para 60 of *Winterwerp*). In case from Poland, the applicant affirms that he was first restricted partially and then was deprived of his recognition before the law [10]. Appointment of his brother as guardian made it trouble-free to send and place him into a social care institution for a long and indefinite term without consent. *Kedzior,* the applicant, was detained there for the reasons which were already decided in *Stanev*.

At regional level, "Art 3 of the American Convention on Human Rights (ACHR)" and "Art 5 of the African Charter on Human and Peoples' Rights (ACHPR)" recognize the right to legal capacity but this right has not been included in the ECHR. In the opinion of the Experts' Committee of the Council of Europe, this right "was unnecessary and could be deduced from other articles in the Convention" [11]. When we refer to ECHR, two provisions of the ECHR can be used to challenge rigid guardianship systems resulting in legal incapacity;

- first is "to challenge the necessity of guardianship itself" (The European Convention on Human Rights[ECHR], 1950, Art 8)
- the second is "to challenge all the unfair ways in which guardianship is imposed" (ECHR, 1950, Art 6)

If read in ECHR terms, both of the above provisions provide for the "right to respect for private and family life, home and right to a fair trial" respectively. Findings of the ECtHR also confirmed that a person who lacks the ability to take decisions will always comprise "an interference with that person's private life" and may amount to a breach of "the right to respect for private life, family, home, and correspondence" *(Syroka v. The Czech Republic ,* 2013, Para 101) under Art 8(1) of ECHR. Further that "privacy includes a person's physical and psychological integrity and the guarantee which it affords is primarily intended to ensure the development, without outside interference, of the personality of each individual in his relations with other human beings" [12].

In *Shtukaturov*, the applicant was deprived of legal capacity for an indefinite period of full dependency on his guardian and could not challenge his deprivation of legal capacity except through the guardian. ECtHR acknowledged it and declared that "the interference with the applicant's private life was very serious because when a court rules that a person is not capable of making any decision, it strips that person of the very essence of his/her personal autonomy, human dignity and human freedom."Such a decision makes that person in some respects, a 'non-person' with no identity as an individual human being" [13].

Some higher domestic courts across Europe have also considered guardianship as a disproportionate measure. In December 2010, the Latvian government was ordered by its Constitutional Court to introduce and set up an alternative to total guardianship, finding that the aim of guardianship is "safeguarding the rights of the mentally ill person", and that it "significantly restricts a person's right to private life (*Mihailous v Latavia*, 2013, Para 79)- section 58 and section 364 of the Civil Law- shall be null and void as from 1 January 2012."Similarly, in Poland, it was applied successfully to the Constitutional Court to terminate the statutory provision which "excluded the adult deprived of legal capacity from the circle of people entitled to initiate proceedings to restore capacity or change the scope of the restriction of legal capacity" [14].

However, ECtHR, in a recent case from Poland, overlooks the alleged abuse of the right of *Mr Kedzior* to respect "for his private and family life" under Art 8, (*Kedzior v. Poland*, 2013) though the Court found that the Polish guardianship laws left *Mr Kedzior* incapable to apply to a court for his legal capacity to be restored . The Polish Government did not contest this point because their own Constitutional Court had already declared that their domestic arrangements were unconstitutional and new arrangements have now been introduced in Poland amending the Code of Civil Procedure in 2007 [10]. Article 559 is added with a new paragraph stating that an application to have a legal incapacitation order quashed or varied may also be lodged by the incapacitated person.

2: Article 8 of ECHR: Another Aspect of the Institutionalization of Mentally Disabled Persons:

"The Difference Between You And Me Is That When You Wake Up, Your Nightmare Ends"

State has a positive obligation under "Art 8 of the Convention" to make sure the availability of a procedure to people restricted of their legal capacity, enabling them to contest any undue interventions like " medical treatment decisions, restrictions on their liberty and other restraints" [8].

Shrukaturov, a Russian national-born in 1982 with the past record of mental illness, was declared disabled in 2003.His mother, as his guardian, admitted him to a psychiatric hospital so that she could claim the property he had inherited from his grandmother. ECtHR, in its judgment, found the violation of "right to liberty and security," (ECHR, 1950, Art 5(1)4) "right to a fair hearing," (ECHR 1950, Art 6(1)) "individual application," (ECHR 1950, Art 34) and "right to respect for private and family life." (ECHR 1950, Art 8) The Court remarked on the violation of article 8 of the ECHR and declared that the applicant's private life had a serious impact of this interference which resulted in full dependence of the applicant on his official guardian for an indefinite period. What adds further to the severity of the violation is that interference could not be challenged other than through his guardian (mother) who had already resisted any efforts to challenge guardianship or to discontinue the measure. The reasoning of the district court to strip the applicant of his legal capacity was inadequate and procedurally flawed where the district court relied exclusively on the medical report of November 2004 which had not made sufficient examination of the degree of the applicant's incapacity [9].

Russian legislation, in cases like above, only made a difference between full capacity and full incapacity of persons with mental disability, and made no reference to borderline situations which is evident in the district court judgment of *Shtukaturov* [9]. The ECtHR therefore concluded the deprivation of the applicant of his legal capacity as interference with the private life of the applicant and declared it inappropriate to the lawful aim followed by the Russian government of "protecting the health and interests of others," in obvious violation of Article 8.

Court, in *Stanev ,* found the violation of Article 6 on the basis that Bulgarian law did not provide with sufficient degree of certainty access for *Mr.Stanev* to seek restoration of his legal capacity but refused even to entertain his arguments for unfair interference with his "right to respect for his private life and home." Thirteen out of seventeen judges, in *Stanev,* found that "no separate issue arises under Article 8" [15]. ECtHR continued the same approach in its recent decision in earlier 2013 in *Kedzior* where the Court believed the alleged violation of *Mr Kedzior's* "right to respect for his private and family life" under Art 8 inadmissible. The reason in support of inadmissibility of Article 8 of ECHR by ECtHR was on the basis that *Kedzior* has already won under Article 5 and 6, so the Court does not need to consider Article 8 separately [10].

Separation of guardianship and other human rights violation is a well-established topic in ECtHR and more cases of this nature will be presented in Court in the future who will disentangle the close relationship between detention in an institution and deprivation of legal capacity on the grounds of mental illness. However, the Court's approach in its handling of the legal capacity claims stands in sharp contrast to its existing body of case law [8]. The issue of institutionalization (in *Stanev*), therefore, remained unaddressed raising a number of issues/problems regarding violation of the rights of individuals with mental incapacity. It narrowed the scope of the judgment of ECtHR which fails to examine and entertain the claim of the applicant under Article 8.

Though the examination of *Mr. Stanev's* complaint, under Article 8, was deemed unnecessary by the majority, four judges who gave dissenting opinions show that there are persons within the Court who consider that the detention of a person with mental disability has more aspects the ECHR should protect. Four dissenting judges argued in favor of the violations of Mr *Stanev*'s Article 8 rights "to respect for his private and family life" and disagreed to the judgment of the majority who says that no separate issue comes up under Article 8. Joint Partly Dissenting Opinion of Judges Tulkens, Spielmann, Laffranque and Partly Dissenting Opinion of Judge Kaleydjievanh) Dissenting Judge Kalaydjieva, from Bulgaria, appropriately identified legal capacity as "the primary issue" in the case which was not touched. It was further added that "instead of due assistance from his officially appointed guardian, the pursuit of his best interests was made completely dependent on the goodwill or neglect shown by the guardian."(*Stanev v. Bulgaria,* 2012, Partly Dissenting Opinion of Judge Kaleydjieva) She added that "in its earlier case-law the Court has expressed the view that an individual's legal capacity is decisive for the exercise of all the rights and freedoms, not least in relation to any restrictions that may be placed on the person's liberty." (*Stanev v. Bulgaria*, 2012, Partly Dissenting Opinion of Judge Kaleydjieva) She further writes that "Mr. Stanev should have [had] the opportunity to assess by himself whether or not, having regard to the living conditions at the home, it was in his interests to remain there" [15].

This language of contemporary standards, by dissenting Judge, is a code of "UN Convention on the Rights of Persons with Disabilities," which sets out that disables should have the legal capacity at equal grounds with others (United Nations Convention on the Rights of Persons with Disabilities[]UNCRPD] , 2006, Art 12(2)) and that the "State is required to make assistance available to those who need help in exercising their right of recognition before the law" [16].

3: Right to Liberty:

"I'm not an object, I'm a person. I need my freedom" ***Rusi Stanev***

Deprivation of legal capacity of the person with mental disability directly results in denial of one's right to liberty. In the light of conditions under which detention often happened to take place by the end of the eighteenth century and throughout nineteenth, the statute law was implemented with its aim to establish special institutions for the protection and care of the insane, to warrant that they were not wrongly detained, and were not ill-treated if detained.

It can be therefore derived that detention, either voluntary or involuntary, must be in the best interest of patients and not of the family, community or the state. The principle of best interest is of remarkable significance in circumstances of voluntary or involuntary placement, treatment and specially depriving a person of his/her legal capacity [17].

According to Oliver Lewis, the use of the term 'a person of unsound mind' is "now outdated and stigmatizing term legitimizes in international law the power of a State to involuntarily detain people with mental disabilities in a psychiatric institution." (Lewis, Protecting the Rights of

People with Mental Disabilities, 2002) ECHR provides for liberty, but allows detention for a number of grounds, (ECHR, 1950, Art 5) one of which is for "persons of unsound mind." (ECHR, 1950, Art 5(1)e) However, ECHR does not explain the term "person of unsound mind". Nor does it speak of situations, in which the individual with mental illness could be deprived of liberty and is also silent in respect of the requirement of "lawful detention." It gives rise to the question that should every detention of a mentally ill person, if carried in and applied according to the domestic laws, be recognized as lawful? [18].

Up till now, considerable case law has been developed by ECtHR regarding this issue. The first complaint in relation to potential illegal denial of autonomy/freedom in psychiatric unit/institution on the ground of unsoundness of mind was presented to ECtHR in 1979 (*Winterwerp v Netherlands,* 1979) which remained the landmark case since then. Winterwerp established the following three conditions test to lawfully detain a person with mental illness in psychiatric institutions. This test is required to be met in order to establish that confinement is legal within the meaning of Art 5(1) of the Convention. The Court affirmed the detention lawful in case of emergency only. The individual detained, otherwise, must be shown to be of unsound mind before detention. It means that:

i) "A true mental disorder must be established before a competent authority on the basis of objective medical expertise" and

ii) "The mental disorder must be of a kind or degree warranting compulsory confinement" and

iii) "The validity of continued confinement depends upon the persistence of such a disorder" [19].

The first two criteria of the test for the lawful detention of persons of unsound mind validate the involuntary detention in a psychiatric unit. However, this does not mean that if a person is stripped of liberty in accordance with the above two principles, his or her detention can last for an indefinite time without any opportunity to review or right to challenge continuing detention. This issue is touched and addressed in the third principle of continued persistence of mental disorder. It means not only that the procedure must meet the general conditions of "accessibility" and "foresee ability" of the European Court but, also, that the initial deprivation must not be arbitrary. The third criterion, settled in *Winterwerp*, also seems inadequate because the determination of persistence of disorder is not always a simple issue. ECtHR admitted that "it does not automatically follow from a finding by an expert authority that the mental disorder which justified a patient's compulsory confinement no longer persists, that the latter must be immediately and unconditionally released into community" [20].

To chase this objective, ECtHR needs to put down some practical and substantive guidelines other than 'kind or degree' of mental illness to determine how severe or dangerous, a person's mental disability needs to be to cause compulsory detention. U.S. Supreme Court states that "when doctors decide that a person is of sufficient 'dangerousness' to imply compulsory confinement, their opinion must be based upon a finding of a recent overt act, attempt or threat to do substantial harm to oneself or another." The legitimacy and lawfulness of deprivation of liberty, therefore, is allowed only when it is "in accordance with a procedure prescribed by law" [11]. *Winterwerp,* in Para 60, stated the same by explaining that the state authorities must conform domestic legislation, and domestic legislation must in itself be compatible with ECHR, with its view of a "fair and proper procedure."

The right to liberty and security of a person is a non-absolute right. It means that the right to liberty can be restricted by allowing the detention of people in certain circumstances which needs some procedure to be followed strictly .The procedure must include that the detention is being authorized by a lawful order. Thus, where lawfulness of detention is at risk, two separate features regarding one's confinement can be challenged.

- "first, the applicant can challenge whether domestic law is in conformity with the Convention" and
- "Secondly, whether domestic law has been applied in a proper manner" [21].

The previous case-law of ECtHR has mostly concerned compulsory detention under mental health legislation in psychiatric wards/hospitals (generally acceptable as long as there are safeguards)" [21]. *Stanev* was the first case of its nature where the ECtHR was to evaluate and review the application of Article 5 to such a case where the person was located by a guardian in a social care home than in psychiatric ward/hospital. If *Stanev* was stripped of his liberty under "Article 5(1) of the European Convention," then, he should have been at liberty to have the legality of the detention evaluated and reviewed by an independent court under Art 5(4) of the Convention which was entirely denied by the Bulgharian court. The ECtHR mentioned and placed the cause of Stanev's detention on national authorities because he was placed in a State-run institution and was not interviewed before his placement in a social care institution. It says that "it is unnecessary in the present case to determine whether, in general terms, any placement of a legally incapacitated person in a social care institution constitutes a 'deprivation of liberty' within the meaning of Article 5(1) of the ECHR" and the judgment does not "rule on the obligations that may arise under the Convention for the authorities in such situations" [15]. However, the ECtHR found that, in the particular circumstances without making any policy generalities, *Stanev* was stripped of his liberty in terms of Article 5. European Court also found Stanev at no health risk that might have admitted as a reason for detention, causing him to have suffered "the full adverse effects of the restrictions imposed on him". This led to the conclusion that *Stanev* had been detained unlawfully. But the question still persists, adding to the confusion that is depriving an individual of his/her liberty-on the ground of mental incapacity- lawful under Article 5(1) of the ECHR? Answering this question, ECtHR stated that "It seems clear to the Court that if the applicant had not been deprived of legal capacity on account of his mental disorder, he would not have been deprived of his liberty." It further said that the detention was not "in accordance with a procedure prescribed by law" *(Stanev v. Bulgaria* , 2012, Para 256) under "Article 5(1)(e) of the ECHR" and, therefore, found an infringement of

Stanev's right under this title(the medical report on which *Mr.Stanev's* placement into the institution was based was two years old) [22].

4: Liberty, Equality before the Law and States' Margin of Appreciation:

'Paths are made by walking' **Franz Kafka**

The right granted to individuals to access and bring violations of human rights directly to the ECtHR has made the European System open and agreeable to the human rights protection of individuals with mental illness. It allows access to these mentally disabled individuals to an alternative legal venue when domestic remedies are insufficient to protect [23].

The ECtHR in *Shtukaturov,* who was placed in a psychiatric hospital by his guardian, held his detention as the violation "Article 5(1) "and "Article 5(4)."The same article of ECHR was applied to stanev's case where he was deprived of his by guardian in a social care home and not in psychiatric hospital. It advances the view that whether the placement of a person with mental illness is in a psychiatric unit or in a social care institution, both amount to denial of freedom and requires judicial review. However, the procedure for admission of an individual to psychiatric units contained in health care acts, is different from the one needed to be admitted to social care home all over the Eastern and Central Europe, which is often very irregular and informal with no procedures or safeguards and generally leads to various kinds of serious violations [24].

The Grand Chamber in its judgment actually ignored the significant question of States' responsibility to make sure that persons with mental illness have the same and equal choices to others in their lives, otherwise, it evokes a kind of "civil death" for a person who is no longer allowed to live and participate in society without the interference of the person called one's legal guardian. Oliver Lewis considers this issue of legal capacity on the ground of 'margin of appreciation'. He comments that perhaps the Grand Chamber "was willing to offer the State a wide margin of appreciation" and was reluctant to provide broad policy guidance in an area where there is yet no obvious common grounds amongst the member States on an issue they consider to be a social or moral/ethical one, notwithstanding the existence of the UN Convention on the Rights of Persons with Disabilities" as evident in SH v Austria , case. First Section Judgment in S.H. and others held that the Austrian regulation (Artificial Procreation Act of 1992 Austria) is in violation of Article 14 in combination with Article 8 of the ECHR by not allowing infertile couples for artificial insemination." However, the judgment was reversed by Grand Chamber, with a vote of 13 to 4, who concluded that "the restrictive Austrian assisted reproduction regulation is not contrary to the Convention and that the Austrian government has a wide margin of appreciation" [25]. The 'margin of appreciation' allowed to the States should be merely that which "is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others"(ECHR 1950 Art 9[2]) and "that people with disabilities constitute a vulnerable group, for whom the State's margin of appreciation to permit differential treatment should be narrow" [22].

CONCLUSION:

"In the End, What we Regret Most are the Chances we Never Took" Frasier Crane

The ECtHR has interpreted Article 5 in a more progressive way many times which does not validate the detention as lawful if based on the consent of the guardian under ECHR, however, the Court has not gone so far as to explain and state that the denial of legal capacity, and the deprivation of other fundamental rights which follow this, constitute a violation of Article 8. Article 12, equal recognition before the law, was one of the most disputed and hotly contested articles to be considered during the treaty deliberation process of UNCRPD in the course of its interpretation [26]. The wording of Article 12 represents "a shift from the traditional dualistic model of capacity versus incapacity and is viewed as an equality-based approach to legal capacity" [27]. The recent decisions from the Court, highlighting the issues of denial of the right of equal recognition before the law and denial of liberty consented through guardian, can be seen against Bulgaria (Stanev v. Bulgaria , 2012), Lithuania (D.D. v. Lithuania , 2012), Poland (Kedzior v . Poland, 2013) and Czech Republic (Sykora v. The Czech Republic, 2013). However, while cases such as Stanev and Sykora have promoted the Court's approach to denial of legal capacity "particularly its finding that such a denial can amount to a breach of Article 8") [28]. Lashin (who was denied his right to marry while in guardianship) moves back the position of the Court by finding that "depriving someone of the legal capacity and maintaining that status may pursue a number of legitimate aims" and that "some form of limitation of legal capacity, such as partial guardianship, may be necessary for a person who is mentally disable." (Lashin v. Russia , 2013, Para 80)

This all brings to the front the innate tension between the "ECHR" and the "UN Convention on the Rights of Persons with Disabilities". The UN Convention on the Rights of Persons with Disability states that "persons with disabilities have the right to enjoy legal capacity on an equal basis with others"(UNCRPD, 2006 , Art 12) and that "the existence of a disability shall in no case justify a deprivation of liberty".(UNCRPD , 2006 Art 14(1)b) This is clearly in conflict with ECHR, which allows and declares the detention of a person of unsound mind as lawful.(ECHR, 1950 Art 5(1)e) *Stanev,* a landmark case, is the example of how the ECtHR is reluctant to interpret the ECHR in the light of human rights treaties of the United Nations, in this case the UNCRPD. The significant point has been given for ECtHR to make reference to UNCRPD in its future judgments. This is the provision particularly in Articles 12 and 19 which speak directly to the point raised in *Stanev*. Similarly ECtHR , even , has interpreted the European Convention very restrictively in psychiatric cases. The under- development of the rights of this marginalized class is the outcome of the under- use of ECHR.

Sir Nicholas Bratza (the President of the Grand Chamber comprised of seventeen judges that gave its judgment in

Stanev case, and also the President of the ECtHR itself) also observed that since the first major mental health case of Winterwerp v. the Netherlands in 1979, "the jurisprudence of the Court in the succeeding twenty years is notable for the almost complete dearth of judicial decisions in this vitally important area." He further explains it that, "This gap is a reflection not of adequate safeguarding by member States of the Convention rights of those with mental disabilities but rather of the acute practical and legal difficulties faced by an especially vulnerable group of persons in asserting those rights and in bringing claims before both the domestic courts and the European Court.". Anyhow, thanks to *Stanev* and *Shtukaturov* judgments which, despite the narrow interpretation of few of the violations of the rights of mentally disabled persons, have made significant progress to European as well as global case law. Shtukaturov further developed the requirements to protect and safeguard the rights of individuals with the history of psychiatric problems. It, rather, "codified" the requirements o protection of the rights of mentally ill persons which must be obeyed by the States. *Stanev's* case "paves the way towards freedom and takes us towards time when people with disabilities are not objectified by the law, but treated as full and equal subjects of human rights and fundamental freedoms." All this will move persons, with mental incapacity, away from the use of "cuffs" and "strait jackets," to new and more humane therapies. This will benefit thousands of persons with disabilities, confined for indefinite periods in decrepit and isolated social care homes throughout Central and Eastern Europe.

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[i] Shaista Naznin has done her LL.M from University of Cardiff, UK and serves as Lecturer of Law at Abdul Wali Khan University, Mardan, Pakistan.

[ii] LL.B (PAK), LL.M (Commercial Law) From Glasgow University, United Kingdom; Assistant Professor (Law Department) Abdul Wali Khan University Mardan K.Pk Pakistan. Email: mzubair@awkum.edu.pk (00923459003028, 03009301171)

[iii] Did LL.M from University of Glasgow, UK; Assistant Professor (Law Department), Abdul Wali Khan University Mardan K.Pk Pakistan