**Explanatory Report**

**to the Convention for the protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine \***

Oviedo, 4.IV.1997

[wyciąg – dot. art. 3 i 4 Konwencji]

**Article 3 – Equitable access to health care**

23. This article defines an aim and imposes an obligation on States to use their best endeavours to reach it.

24. The aim is to ensure equitable access to health care in accordance with the person's medical needs. "Health care" means the services offering diagnostic, preventive, therapeutic and rehabilitative interventions, designed to maintain or improve a person's state of health or alleviate a person's suffering. This care must be of a fitting standard in the light of scientific progress and be subject to a continuous quality assessment.

25. Access to health care must be equitable. In this context, "equitable" means first and foremost the absence of unjustified discrimination. Although not synonymous with absolute equality, equitable access implies effectively obtaining a satisfactory degree of care.

26. The Parties to the Convention are required to take appropriate steps to achieve this aim as far as the available resources permit. The purpose of this provision is not to create an individual right on which each person may rely in legal proceedings against the State, but rather to prompt the latter to adopt the requisite measures as part of its social policy in order to ensure equitable access to health care.

27. Although States are now making substantial efforts to ensure a satisfactory level of health care, the scale of this effort largely depends on the volume of available resources. Moreover, State measures to ensure equitable access may take many different forms and a wide variety of methods may be employed to this end.

**Article 4 – Professional standards**

28. This article applies to doctors and health care professionals generally, including psychologists whose interactions with patients in clinical and research settings can have profound effects and social workers who are members of teams involved in the decision making process or in the carrying out of interventions. From the term "professional standards" it follows that it does not concern persons other than health care professionals called upon to perform medical acts, for example in an emergency.

29. The term "intervention" must be understood here in a broad sense; it covers all medical acts, in particular interventions performed for the purpose of preventive care, diagnosis, treatment or rehabilitation or in a research context.

30. All interventions must be performed in accordance with the law in general, as supplemented and developed by professional rules. In some countries these rules take the form of professional codes of ethics (drawn up by the State or by the profession), in others codes of medical conduct, health legislation, medical ethics or any other means of guaranteeing the rights and interests of the patient, and which may take account of any right of conscientious objection by health care professionals. The Article covers both written and unwritten rules. When there is a contradiction between different rules, the law provides the means of resolving the conflict.

31. The content of professional standards, obligations and rules of conduct is not identical in all countries. The same medical duties may vary slightly from one society to another. However, the fundamental principles of the practice of medicine apply in all countries. Doctors and, in general, all professionals who participate in a medical act are subject to legal and ethical imperatives. They must act with care and competence, and pay careful attention to the needs of each patient.

32. It is the essential task of the doctor not only to heal patients but also to take the proper steps to promote health and relieve pain, taking into account the psychological well-being of the patient. Competence must be determined primarily in relation to the scientific knowledge and clinical experience appropriate to a profession or speciality at a given time. The current state of the art determines the professional standard and skill to be expected of health care professionals in the performance of their work. In following the progress of medicine, it changes with new developments and eliminates methods which do not reflect the state of the art. Nevertheless, it is accepted that professional standards do not necessarily prescribe one line of action as being the only one possible: recognised medical practice may, indeed, allow several possible forms of intervention, thus leaving some freedom of choice as to methods or techniques.

33. Further, a particular course of action must be judged in the light of the specific health problem raised by a given patient. In particular, an intervention must meet criteria of relevance and proportionality between the aim pursued and the means employed. Another important factor in the success of medical treatment is the patient's confidence in his or her doctor. This confidence also determines the duties of the doctor towards the patient. An important element of these duties is the respect of the rights of the patient. The latter creates and increases mutual trust. The therapeutic alliance will be strengthened if the rights of the patient are fully respected.

objection by health care professionals. The Article covers both written and unwritten rules. When there is a contradiction between different rules, the law provides the means of resolving the conflict.

31. The content of professional standards, obligations and rules of conduct is not identical in all countries. The same medical duties may vary slightly from one society to another. However, the fundamental principles of the practice of medicine apply in all countries. Doctors and, in general, all professionals who participate in a medical act are subject to legal and ethical imperatives. They must act with care and competence, and pay careful attention to the needs of each patient.

32. It is the essential task of the doctor not only to heal patients but also to take the proper steps to promote health and relieve pain, taking into account the psychological well-being of the patient. Competence must be determined primarily in relation to the scientific knowledge and clinical experience appropriate to a profession or speciality at a given time. The current state of the art determines the professional standard and skill to be expected of health care professionals in the performance of their work. In following the progress of medicine, it changes with new developments and eliminates methods which do not reflect the state of the art. Nevertheless, it is accepted that professional standards do not necessarily prescribe one line of action as being the only one possible: recognised medical practice may, indeed, allow several possible forms of intervention, thus leaving some freedom of choice as to methods or techniques.

33. Further, a particular course of action must be judged in the light of the specific health problem raised by a given patient. In particular, an intervention must meet criteria of relevance and proportionality between the aim pursued and the means employed. Another important factor in the success of medical treatment is the patient's confidence in his or her doctor. This confidence also determines the duties of the doctor towards the patient. An important element of these duties is the respect of the rights of the patient. The latter creates and increases mutual trust. The therapeutic alliance will be strengthened if the rights of the patient are fully respected.