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## II

**AUTONOMY AND PROTECTION OF PERSONS WITH  
MENTAL DISORDERS... A CONFLICT OF VALUES?****Claire ROMMELAERE**

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**A. – Research Context**

This contribution is the draft (1) of the sub-thesis of a Ph.D project entitled “Persons with mental disorders and interventions of health professionals: reconciling autonomy and protection”. (2)

The question of the meaning and relations of such concepts as autonomy and protection were inspired by the ambitious reform of Belgian law regarding legal incapacity of adults. (3) Parliamentary works reflect, indeed, the obsessional intention to strike a fair balance between autonomy and protection. (4) This constant search of a compromise could mean that autonomy and protection are antagonistic principles: basically, either we respect autonomy of people by not interfering with their choices, or we protect people and, for their own sake or the one of others, we interfere; as it is impossible to promote both autonomy and protection, the best we can do is to work towards a compromise.

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(1) Dated October 15, 2015.

(2) Original title: “La personne atteinte d’un trouble mental et les interventions de professionnels de la santé : (ré)concilier autonomie et protection”.

(3) Act reforming incapacity regimes and introducing a new protection status in accordance with human dignity (Loi du 17 mars 2013 réformant les régimes d’incapacité et instaurant un nouveau statut de protection conforme à la dignité humaine, *M.B.*, 14 June 2013, p. 38132).

(4) Among others: Proposition de loi instaurant un statut global des personnes majeures incapables, *Doc. parl.*, Ch., 2010-2011, No. 1009/001, p. 6 ; Proposition de loi instaurant un statut global des personnes majeures incapables et proposition de loi instaurant un régime global d’administration provisoire des biens et des personnes, Rapport fait au nom de la Commission de la Justice, *Doc. parl.*, Ch., 2011-2012, No. 1009/010, pp. 237 and 258.

However, one may wonder whether this opposition is as unquestionable as it seems to be. Firstly, a real exploration of the concepts is needed: the notions of autonomy and protection, especially their meaning in law, are not immediately clear. Besides, they raise the issue of human dignity.

The opposition between autonomy and protection should moreover be challenged, for this systematic opposition could prevent the development of more creative or effective legal tools. Such hypothesis does not only concern rules governing legal incapacity, but also all rules that are likely to impact the situation of persons with mental disorders, in the healthcare field. For example, the patient's rights or the rules about involuntary placement in psychiatric facilities also raise the issues of autonomy and protection.

The hypothesis which is the starting point of my research could therefore be formulated as follows: to develop new or better legal tools regarding mental health, the conflict between autonomy and protection should be transcended.

In this context, the first question I address is the legal meaning of the concepts of autonomy and protection but also of human dignity, which is often called upon in legal texts about incapacity or (mental) health. As law does not necessarily reflect the usual meaning of words, a research of their precise legal meaning is useful: on the one hand, the legal meaning of the word says something about its social – maybe intuitive – acceptance; (5) to be more practical, on the other hand, let's say that if the law promotes for example the autonomy of persons with mental disorders, the full meaning of this objective must be understood in its right sense if we want to be able to check whether the objective has been achieved, or could be achieved, or could be achieved in a better way.

## **B. – Reflexions Over the Legal Construction of Three Key-Concepts**

The obviously easiest way to grasp the legal meanings of the concepts of autonomy, protection and human dignity was to start with a textual analysis. The hypothesis I wish to present here is

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(5) O. LECLERC, "Quelle analyse juridique pour les objets non juridiques ?", Course addressed to doctoral students belonging to the late "Académie Louvain", as part of doctoral training, 24 January 2014.

thus the result of a search for my key-concepts in Belgian and international texts about legal capacity, the patient's rights, involuntary placement or treatment in psychiatric hospitals, the rights of persons with disabilities, bioethics and human rights... All pre-selected texts (6) were thoroughly analysed, but only those that *expressly* mention the key-concepts will be mentioned as examples below.

### 1. Autonomy, a Capacity Between Independence and Interaction

When searching for the legal meaning of autonomy, one cannot miss the link that is frequently made between autonomy and legal capacity: “capacité : la compétence *d'exercer ses droits et devoirs soi-même et de façon autonome*”; (7) “Si, pour des motifs fondés, le médecin estime que ce refus émane d'un patient qui n'est plus en mesure *d'exercer ses droits de manière autonome*, il devra s'adresser au mandataire du patient”; (8) “For persons who are not

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(6) For Belgian law, the analysis focuses on legal texts that are likely to impact the situation of persons with mental disorders, in the healthcare field: dispositions of the Code of Civil Law about incapacity (Art. 488-502, as modified by the Loi du 17 mars 2013 réformant les régimes d'incapacité et instaurant un nouveau statut de protection conforme à la dignité humaine, *M.B.*, 14 June 2013, p. 38132) and Patient's Rights Act (Loi du 22 août 2002 relative aux droits du patient, *M.B.*, 26 septembre 2002, p. 43719) for the impact on *healthcare decisions*, and on acts about involuntary placement in psychiatric facilities (Loi du 26 juin 1990 relative à la protection de la personne des malades mentaux, *M.B.*, 27 July 1990, p. 14806 ; Loi du 5 mai 2014 relative à l'internement de personnes, *M.B.*, 9 July 2014, p. 52159 – which should come into force in July 2016), for the impact on *healthcare location*. The parliamentary documents leading to these acts were equally searched. At an international level, raw material consists of instruments of the Council of Europe (Convention on Human Rights and Biomedicine, Oviedo, 4 April 1997 – it has not been signed by Belgium but remains nevertheless an inspiring text; Recomm. No. R (83) 2 concerning the legal protection of persons suffering from mental disorder placed as involuntary patients; Recomm. R(99)4 on principles concerning the legal protection of incapable adults; Recomm. Rec(2004)10 concerning the protection of the human rights and dignity of persons with mental disorder; Recomm. CM/Rec(2009)3 on monitoring the protection of human rights and dignity of persons with mental disorder ; Recomm. CM/Rec(2009)11 on principles concerning continuing powers of attorney and advance directives for incapacity) and of United Nations (Declaration on the Rights of Mentally Retarded Persons, Resol. No. 2856, 20 December 1971; Declaration on the Rights of Disabled Persons, Resol. No. 3447, 9 December 1975; Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care, Resol. No. 46/119, 17 December 1991; Convention on the Rights of Persons with Disabilities, signed in New York, 13 December 2006, approved in Belgium by an Act of 13 May 2009), including UNESCO (Universal Declaration on Bioethics and Human Rights, 19 October 2005), these organisations being the most directive through recommendations or in conventions they enjoined their members to adhere to.

(7) Civ. C., art. 491, e). I underline.

(8) Projet de loi relatif aux droits du patient, Proposition de loi complétant la loi sur les hôpitaux, coordonnée le 7 août 1987, en ce qui concerne le droit de plainte du patient,

capable of *exercising autonomy*, special measures are to be taken to protect their rights and interests”; (9) “The following principles apply to the protection of adults who, by reason of an impairment or insufficiency of their personal faculties, are incapable of *making, in an autonomous way, decisions* concerning any or all of their personal or economic affairs, or understanding, expressing or acting upon such decisions and who consequently cannot protect their interests”. (10)

Particularly in the last examples, we can see that autonomy is often mentioned as a mere synonym of decision-making capacity: to be autonomous is to be able to make decisions and act according to them without any interference of others. In that sense, autonomy involves reasoning abilities as well as protection against interferences.

Reasoning abilities, that a judge or a caregiver could have to assess, in order to know whether a person can make her own decisions or whether a substitute decision-maker must be appointed, are generally summarised as follows:

- understanding the relevant information;
- assessing one’s own situation and the reasonably foreseeable consequences, for oneself, of the decision;
- reasoning about (treatment) options, weighing up different options;
- making one’s choice known. (11)

Any person meeting these conditions must be protected from the interference of others in the course of the decisional process: in the name of autonomy, the Belgian Code of Civil Law, inspired by

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Proposition de loi relative au contrat de soins médicaux et aux droits du patient, Proposition de loi relative aux droits du patient, Rapport fait au nom de la Commission affaires sociales, *Doc. parl.*, Sén., 2001-2002, No. 2-1250/3, p. 55. I underline.

(9) Universal Declaration on Bioethics and Human Rights, 19 October 2005, Art. 5. I underline.

(10) Council of Europe, Recommendations R(99)4 on principles concerning the legal protection of incapable adults, principle 1. I underline.

(11) K. ROTTHIER, *Gedwongen opname van de geesteszieke*, Bruges, Die Keure, 2012, p. 272; L.L. SESSUMS *et al.*, “Does This Patient Have Medical Decision-Making Capacity?”, *JAMA*, 2011, p. 421; P.S. APPELBAUM, “Assessment of Patients’ Competence to Consent to Treatment”, *N. Engl. J. Med.*, 2007, p. 1836. For an example in statutory law, see English law: England and Wales Mental Capacity Act 2005 (c.1, s.3: general definition of inability to make decisions), The National Archives, [www.legislation.gov.uk/ukpga/2005/9/part/1](http://www.legislation.gov.uk/ukpga/2005/9/part/1).

the Council of Europe, (12) tends consequently to postpone and to reduce as much as possible any measure of incapacity, which deprives a person from exercising her rights all by herself.

Autonomy could then simply appear as the independent exercise of legal capacity, which requires rational abilities on the one hand, protection against interferences on the other hand.

However, our Code of Civil Law also claims that a measure of legal incapacity should increase the autonomy of the incapable person as much as possible. (13) This is enough to question the autonomy-capacity tandem. Besides, the Convention of the Council of Europe on Human Rights and Biomedicine insists, in its Explanatory Report, on the respect “for the autonomy and dignity of the person in all circumstances, even if the person is considered legally incapable of giving consent”. (14) It is also noticeable that the guide to the UN Convention on the Rights of Persons with Disabilities includes in the notion of autonomy the help one can need to make one’s own decisions: “Respect for the individual autonomy of persons with disabilities means that persons with disabilities have, on an equal basis with others, reasonable life choices, are subject to minimum interference in their private life and can make their own decisions, *with adequate support where required*”. (15)

Far from a heresy, these provisions express another conception of autonomy, which is more subtle and intuitive than the mere ability to exercise one’s rights without any assistance.

To qualify this refined conception of autonomy, I sought and found support in the works of two North American authors, Agnieszka Jaworska in the context of the Alzheimer disease and Jennifer Nedelsky in a more politico-social approach.

A. Jaworska separates autonomy from legal capacity, understood as a full decision-making capacity. Capacity for autonomy, in her approach, is a ‘capacity to value’, regardless of the help eventually needed to make decisions in accordance with one’s values or

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(12) Council of Europe, Recommendations R(99)4 on principles concerning the legal protection of incapable adults.

(13) Art. 497: “L’administration accroît, dans la mesure du possible, l’autonomie de la personne protégée”.

(14) Convention on Human Rights and Biomedicine, Explanatory Report, 17 December 1996, *conventions.coe.int*, § 106.

(15) UN, *Monitoring the Convention on the Rights of Persons with Disabilities*, Guidance for human rights monitors professional training series No. 17, New-York and Geneva, 2010, p. 19. I underline.

to translate one's decisions into appropriate actions: "the capacity for autonomy ought not to be thought of as the capacity to carry out one's convictions into action without external help, a capacity that requires reasoning through complex sets of circumstances to reach the most appropriate autonomous decisions; rather, that the capacity for autonomy is first and foremost the capacity to espouse values and convictions, whose translation into action may not always be fully within the agent's mastery". (16)

Due to the important part she attributes to the support of others in exercising one's autonomy, A. Jaworska's work can be situated in the line of relational autonomy, (17) developed *inter alia* by Jennifer Nedelsky in an article dedicated to the idea of reconceiving autonomy. (18) In this enlightening contribution, J. Nedelsky seeks to reconcile the autonomy, as a "human capacity for making one's own life and self", (19) and the inevitable social influence of the choices we make in exercising that capacity: from the protection against social interferences, the issue switches to promotion of autonomy within the social sphere. Relatedness becomes a main component of autonomy, as we are collective beings: "[...] people do not exist in isolation, but in social and political relations. People develop their predispositions, their interests, their autonomy – in short, their identity – in large part out of these relations. The very way one experiences and perceives the world, for example, is shaped by the social construction of language. The task, then, is to think of autonomy in terms of the forms of human interactions in which it will develop and flourish". (20)

As above-mentioned, the legal meaning of autonomy must be larger than a mere synonym of legal capacity. Otherwise, some legal instruments would be irrational: if autonomy is capacity, how could an incapacity measure promote autonomy, as enjoined by our Code of Civil Law? Moreover, I cannot admit that such an important concept, given the countless times it is used in the analysed

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(16) A. JAWORSKA, "Respecting the Margins of Agency: Alzheimer's Patients and the Capacity to Value", *Philosophy and Public Affairs*, 1999, 28, p. 126. For a helpful comment, see F. GZIL, "La question éthique du respect de l'autonomie", *Annales médico-psychologiques*, 2009, 167, pp. 230-233.

(17) See also N. RIGAUX, "Autonomie et démence I : Pour une conception de l'autonomie 'dementia-friendly'", *Ger. Psychol. Neuropsychiatr. Vieil.*, 2011, p. 112.

(18) J. NEDELSKY, "Reconceiving Autonomy: Sources, Thoughts and Possibilities", *Yale J. of law and Feminism*, 1989, pp. 7-36.

(19) *Ibid.*, p. 8.

(20) *Ibid.*, p. 21.

texts, adds no value at all to the legal discourse: where is the added value of the recourse to the concept of autonomy if it is a synonym of a well-known legal notion? In other words, autonomy should be defined in such a way it makes sense in our legal discourse.

The works of A. Jaworska and J. Nedelsky give clues to complete the textual analyse and qualify, in a legal context, autonomy as a concept which is independent from legal capacity. So far, it seems consistent with the above-analysed texts to describe autonomy as a capacity to value, which is indeed specific to the individual, but which is built, developed and translated into decisions and actions through relationships with others.

This understanding of autonomy does not exclude (decision-making) capacity but is not limited to this acceptation. Autonomy includes capable and incapable people, as long as they express attachment to values, but regardless of whether they need help in order to act according to these values.

Let's now examine the notion of protection and see how it could be matched with a reconceived autonomy.

## 2. Protection Versus Autonomy: Antagonism?

In Belgian law, the legal texts that are likely to impact the situation of persons with mental disorders attribute to the word 'protection' a very specific meaning: incapacity decisions are called 'measures of protection' (21) and so are involuntary hospitalisations of persons suffering from a mental illness. (22) Moreover, recent acts about internment of persons with mental disorders who committed an offense define internment as a safety measure seeking both to protect society and to care for the internee. (23) In international

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(21) Civ. C., Art. 491, a): "personne protégée : une personne majeure qui, par une décision de justice prise conformément à l'article 492/1, a été déclarée incapable d'accomplir un ou plusieurs actes".

(22) Loi du 26 juin 1990 relative à la protection de la personne des malades mentaux, Art. 1: "Sauf les mesures de protection prévues par la présente loi, le diagnostic et le traitement des troubles psychiques ne peuvent donner lieu à aucune restriction de la liberté individuelle [...]"; the so-called protection measures actually refer to hospitalisation as well as to treatment in 'family settings' but, for simplicity's sake, only the term of hospitalisation will be used here.

(23) Loi du 21 avril 2007 relative à l'internement des personnes atteintes d'un trouble mental, *M.B.*, 13 July 2007, p. 38271, Art. 2 (will be repealed before coming into force by the Act of 5 May 2014); loi du 5 mai 2014 relative à l'internement de personnes, *M.B.*, 9 July 2014, p. 52159, Art. 2 (should come into force in July 2016).

texts, the word ‘protection’ is used in its usual meaning (24) and no trace could be found in these texts of the tendency to categorise involuntary hospitalisation as a ‘measure of protection’.

However, Belgian law does not seem inconsistent when bringing closer to each other measures such as decision of legal incapacity, involuntary hospitalisation and internment. Even though they differ significantly in their procedures, objectives or actual development, they still have a point in common, at a more abstract level, for they all seek to protect both the individual concerned by the measure and the society in general: decisions of incapacity allow persons with insufficient reasoning abilities to receive support in exercising their rights, while limiting risks, for capable others, to conclude legal acts that would then be declared invalid for lack of consent of the other party; involuntary hospitalisation can be applied in the case of a risk for the mentally ill person to harm herself or others; as to internment, its purpose is to protect society and to offer care to the internee, in order to ensure his or her social reintegration.

Thus, theoretically, these measures share an ultimate objective, which consists in allowing a person with a disorder to live in society, with the support she needs to achieve that purpose: persons considered incapable by a judge will be assisted by an administrator and persons hospitalised in psychiatric facilities or interned should receive all appropriate healthcare to be able to live in society without being a risk for themselves or others.

A legal construction of the notion of protection, in its specific meaning, could therefore be analysed as a set of judiciary measures – decisions of incapacity, involuntary hospitalisation, internment – taken in order to compensate for the lack of decision-making abilities of a person or to prevent a person suffering from a mental disorder to harm herself or others, with as ultimate objective to (try to) foster this person’s management of her life in our society.

Is this antagonistic with the legal construction of autonomy, as described in the previous section?

It does not seem so: autonomy, as a capacity to express values guiding our choices, cannot flourish and be translated in our lives

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(24) Except for Recommendation No. R (99) 4 of the Council of Europe (on principles concerning the legal protection of incapable adults), which directly inspired the Belgian Code of Civil Law.

without interactions, relationships to others appearing as an essential component of autonomy. Therefore, the concern for autonomy first implies to seek to restore relationships that have been threatened by a mental disorder, which is the purpose of legal measures of protection. Consequently, these measures are not opposed to autonomy, which they try, conversely, to preserve or restore. As J. Nedelsky advised it, our legislator tries “to think of autonomy in terms of the forms of human interactions in which it will develop and flourish”. (25)

However, this should be nuanced here, for there is an undeniable difference between the immediate and the ultimate objectives of a measure of protection: in a first stage, such a measure seeks to prevent a person from harming herself or others and, to this purpose, it takes the form of an exclusion, either legal – incapacity – or physical – hospitalisation or internment. Such means present a high risk of annihilation of a person’s autonomy, which is tolerable only because the ultimate objective consists of a restoration of relationships with others and of social life. In other words, only the ultimate objective of these measures legitimates the risky means used to reach their immediate objective. Therefore, the ultimate objective of a measure of protection must colour all aspects of this measure.

The tendency to oppose autonomy and protection should be rephrased as a tension between immediate and ultimate objectives of a measure of protection: applying the means of the immediate objective one should never forget the ultimate objective, otherwise one would jeopardize the legitimacy of the measure... or, maybe, human dignity?

### 3. Human Dignity

A remarkable point about human dignity is that it is most of the time mentioned in the title, in the preamble or in the very first provisions of the textual sources, whether at a national (26)

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(25) J. NEDELSKY, “Reconceiving Autonomy: Sources, Thoughts and Possibilities”, *op. cit.*, p. 21.

(26) The Act reforming incapacity regimes in the Code of Civil Law is entitled the Loi du 17 mars 2013 réformant les régimes d’incapacité et instaurant un nouveau statut de protection conforme à la dignité humaine (*M.B.*, 14 June 2013, p. 38132); in the Patient’s Rights Act, the first article about patients’rights mentions the right to respect of one’s human dignity (Loi du 22 août 2002 relative aux droits du patient, *M.B.*, 26 September 2002, p. 43719,

or international (27) level. Formally, this observation underlines the importance of the notion but does not give any clue about its essence.

As to a substantial content of human dignity, Belgian sources only offer application examples. Indeed, in parliamentary documents, human dignity is invoked to insist on the importance of considering abilities of others rather than their inabilities (28), preserving private life and intimacy of patients, (29) relieving their pain, (30) providing for appropriate mental healthcare when needed (31) or avoiding to refer to a person using one problematic feature so, for example, saying the ‘interned person’ rather than ‘the internee’. (32)

Such intuitive applications seem all to refer to human beings’ intrinsic worth. This interpretation is more clearly expressed by international sources, whose level of abstraction is higher: “Recall-

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Art. 5) ; in the internment act, the second provision refers to the notion: “Compte tenu du risque pour la sécurité et de l’état de santé de la personne internée, [la personne internée] se verra proposer les soins dont elle a besoin pour mener une vie conforme à la dignité humaine” (Loi du 5 mai 2014 relative à l’internement de personnes, *M.B.*, 9 July 2014, p. 52159 (should come into force in July 2016), Art. 2, al. 2).

(27) 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 April 1997; Recommendation Rec(2004)10 concerning the protection of the human rights and dignity of persons with mental disorder; preambles of the UN Convention on the Rights of Persons with Disabilities, signed in New York, 13 December 2006, approved in Belgium by an Act of 13 May 2009 and of the UNESCO Universal Declaration on Bioethics and Human Rights, 19 October 2005.

(28) Proposition de loi instaurant un statut global des personnes majeures incapables et proposition de loi instaurant un régime global d’administration provisoire des biens et des personnes, Rapport fait au nom de la Commission de la Justice, *Doc. parl.*, Ch., 2011-2012, No. 1009/010, p. 100.

(29) Projet de loi relatif aux droits du patient [...], Rapport fait au nom de la Commission de la santé publique, de l’environnement et du renouveau de la société, *Doc. parl.*, Ch., 2001-2002, No. 50-1642/12, pp. 26, 30 et 63.

(30) Proposition de loi modifiant la loi du 22 août 2002 relative aux droits du patient en y insérant le droit pour toute personne de recevoir des soins visant à soulager sa douleur, ainsi que l’arrêté royal n° 78 du 10 novembre 1967 relatif à l’exercice des professions des soins de santé, *Doc. parl.*, Ch., 2003-2004, No. 0551/001, p. 4 ; Projet de loi relatif aux droits du patient, Amendements, *Doc. parl.*, Ch., 2001-2002, No. 50-1642/8, p. 2 ; Projet de loi relatif aux droits du patient [...], Rapport fait au nom de la Commission de la santé publique, de l’environnement et du renouveau de la société, *Doc. parl.*, Ch., 2001-2002, No. 50-1642/12, p. 12.

(31) Art 2 de la loi du 5 mai 2014 relative à l’internement des personnes (non en vigueur) et travaux préparatoires : Proposition de loi relative à l’internement de personnes, Développements, *Doc. parl.*, Sén., 2012-2013, No. 5-2001/1, pp. 15 et 65 ; Proposition de loi relative à l’internement de personnes, Rapport fait au nom de la Commission de la Justice, *Doc. parl.*, Sén., 2013-2014, No. 5-2001/6, p. 19.

(32) Proposition de loi relative à l’internement de personnes, Rapport fait au nom de la Commission de la Justice, *Doc. parl.*, Sén., 2013-2014, No. 5-2001/6, pp. 50-51.

ing the principles proclaimed in the Charter of the United Nations which recognize the inherent dignity and worth and the equal and inalienable rights of all members of the human family as the foundation of freedom, justice and peace in the world (...); (33) “Inherent dignity refers to the worth of every person”; (34) “The fundamental equality of all human beings in dignity and rights is to be respected so that they are treated justly and equitably”... (35)

Generally, human dignity refers to the worth of human beings, regardless of their specific situation.

This description does certainly not do justice to the endless controversies about the essence and the scope of human dignity but perhaps it could be an interesting addition to the conceptual frame of the research. The reference to human dignity could indeed be invoked in the assessment of measures of protection: where a measure of protection fails to fulfil its role and proves to be ineffective in restoring what could be restored of relationships with others, it becomes a mere exclusion measure incompatible with the worth that one should grant each fellow human being. A break in the balance between immediate – prevention of harm – and ultimate – restoration of social relationships – objectives of a measure of protection could then be described as a violation of human dignity.

### C. – Provisional Synthesis

The first part of my doctoral research is aiming at building a conceptual frame from the analysis of three key-concepts, in the legal instruments that are likely to influence the situation, in the healthcare field, of a person suffering from a mental disorder: autonomy, protection and human dignity.

The construction of autonomy in legal texts was described as a capacity to value, which is specific to the individual, but which is built, developed and translated into decisions and actions through relationships with others. As to the concept of protection, it is ana-

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(33) Preamble, a), of the UN Convention on the Rights of Persons with Disabilities, signed in New York, 13 December 2006, approved in Belgium by an Act of 13 May 2009.

(34) UN, *Monitoring the Convention on the Rights of Persons with Disabilities. Guidance for human rights monitors Professional training series No. 17*, New-York and Geneva, 2010, p. 18.

(35) UNESCO, Universal Declaration on Bioethics and Human Rights, 19 October 2005, Art. 10.

lysed as a set of judiciary measures – decisions of incapacity, involuntary hospitalisation, internment – taken in order to compensate for the lack of decision-making abilities of a person or to prevent a person suffering from a mental disorder to harm herself or others, with as ultimate objective to (try to) foster this person’s management of her life in our society.

Therefore, it does not seem relevant to consider both autonomy and protection as *values*, nor to see an antagonism between these concepts. Given the earlier developments, I would tend to refer to autonomy only as a value, while measures of protection are at the service of this value: indeed, measures of protection seek to preserve autonomy by maintaining or restoring one of its essential components, i.e. social relationships.

Unsurprisingly, human dignity appears as a fundamental value, the essence and status of which remain nevertheless unclear. Further work is needed, especially to explore more deeply the links between autonomy and human dignity in law and moral philosophy. So far, let’s say that defining human dignity as the intrinsic worth of human beings could complete the conceptual frame by qualifying a failing protection measure as a violation of human dignity.

A well-thought conceptual frame should subsequently foster a finer legal analysis of the challenges the question of the autonomy of patients in the mental health field is raising.