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**THE RIGHT TO MENTAL HEALTH IN
POST-PANDEMIC SPAIN:**

A legal reform and the integration of AI

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“Everyone, throughout their lifetime, requires an environment that supports their mental health and well-being; (...), we are all potential users of mental health services.”

- Former UN Special Rapporteur and Dr. in Psychiatry Dainius Pūras

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ABSTRACT

The COVID-19 pandemic has accentuated the need for comprehensive mental health care, particularly for Generation Z in Spain. Despite existing healthcare policies, the Spanish National Healthcare System (NHS) predominantly addresses severe mental disorders, often neglecting non-severe mental health conditions. This oversight forces individuals to seek private psychological help, which is not financially accessible for everyone, creating significant disparities in mental health care access and quality.

This thesis explores the current limitations of Spain's mental health care framework and proposes the integration of Artificial Intelligence (AI) tools as a solution. AI has the potential to revolutionize mental health care by providing personalized education, preventive care, and assistance in diagnosis, thus addressing the gaps in the current system. The proposed AI solutions aim to make mental health care more accessible and equitable, reducing the burden on public health services and improving mental health outcomes.

By advocating for a shift from viewing mental health care as a luxury to recognizing it as a basic human right, this research aims to foster a more inclusive and supportive mental health care system in Spain, ultimately improving the well-being of Generation Z and the broader population.

KEYWORDS: Mental Health, Spanish National Healthcare System, Artificial Intelligence, Fundamental Right, Gen Z, Pandemic and Legal Framework

LIST OF ABBREVIATIONS

AC/ACs	Autonomous Community/Communities
AI	Artificial Intelligence
AILD	Proposal for an Artificial Intelligence Liability Directive
App	Application Program
CBT	Cognitive Behavioral Therapy
CFR	European Charter of Fundamental Rights
CRPD	Convention on the Rights of Persons with Disabilities
DPL	Directive on Product Liability
ECHR	Convention for the Protection of Human Rights and Fundamental Freedoms, better known as the European Convention on Human Rights
EU	European Union
Gen Z	Generation Z
ICESCR	International Covenant on Economic, Social and Cultural Rights
ML	Machine Learning
NHS	National Healthcare System
SC	Spanish Constitution
UN	United Nations
UDHR	Universal Declaration of Human Rights
WHO	World Health Organization
CJUE	Court of Justice of the European Union

INTRODUCTION

Figure 1.

Picture posted on Instagram by Stop Suicidios [[@stop.suicidios](#)] on 11th July 2024.



Note. The figure translated to english states: “Mental health appointment confirmed at Retiro on 05/11/2025 at 3:30 pm. CSMRE. Please call 913690491 if you cannot attend.”

An SMS message received by a Spanish citizen in July 2024 who requested an appointment for Psychiatry in Madrid, capital of Spain, concretely in the Retiro Mental Health Center (CSMRE – Centro de Salud Mental de Retiro) is shown in Figure 1. The appointment is issued for the 5th of November of the year 2025. This picture was posted on the social media platform Instagram originally by [@stop.suicidios](#) on the 11th of July of 2024. In the caption of the post you may read “Someone requests a psychiatric appointment and it is issued for the 5th of November of 2025. A friend of mine sent me this image. The appointment has been requested in July 2024. It seems surreal, but this is the ‘best healthcare system in the world’, and the welfare state that politicians want to sell to us and for which we pay taxes. Draw your own conclusions.” Numerous media platforms, ‘Es Decir Diario’ among them, have echoed the news.

The picture is going viral as these words are being written, and not without cause. Imagine for a second having to wait 482 days for a medical appointment –from the day of the posting until the day of the suggested appointment–. This is how long Spanish citizens who cannot afford to seek help in the private health sector need to wait to get the help they need. Is this fair? Is this a reasonable time frame? Both answers are ‘no’.

Where is the right to health protection, article 43 of the Spanish Constitution (SC)? Where is the right to equality, article 14 of the SC? Where are the effects of the constitutional principle of dignity?

Spain claims to be a social and democratic State, governed by the rule of law, which advocates as the highest values of its legal system: liberty, JUSTICE, EQUALITY and political pluralism –Article 1 of the SC–. As people without financial resources cannot access the private mental healthcare system, they are condemned to wait almost a year and a half to access public mental healthcare services. Especially in the aftermath of the COVID-19 quarantine, where is the justice and equality, supreme values of the State when it comes to mental health?

1. Aim of the research

This research aims to address the significant discriminatory gap in Spain's mental health care system, focusing on non-severe mental health conditions that are neglected by the National Healthcare System. Advocating for a fundamental right to mental healthcare, it provides a clear pathway for improving the legal framework transforming mental healthcare an effective part of the right to health protection rather than a luxury. Lastly, it advocates for the use of AI technologies into Spain's public health strategies, ensuring that these innovations lead to tangible improvements in mental health care accessibility and quality.

2. Research question

Taking into consideration the breach on the mental health of Generation Z in the post-pandemic era, how can mental healthcare be an effective fundamental right in the Spanish legal framework and how can AI help?

3. Context, and importance of the research

In Spain, despite a heavy compilation of healthcare policies, the public healthcare system often overlooks non-severe mental health conditions, focusing primarily on severe mental disorders (Section 7 Annex III, Royal Decree 1030/2006) and simply foreseen for the promotion of mental health (article 18 of the Law 14/1986, of 25 April 1986 on General Health). This oversight has necessitated reliance on the private sector, creating significant disparities in accessibility and affordability of mental health services. The need for a more inclusive approach has become increasingly evident, especially in light of the mental health repercussions following the COVID-19 pandemic which exposed and exacerbated existing systemic weaknesses, especially in Generation Z (Gen Z).

The concept of network responsibility is pivotal in addressing these systemic weaknesses. Traditionally, responsibility in healthcare has been viewed through the lens of individual or organizational accountability. However, the complexity and interconnectedness of modern healthcare systems require a **more holistic approach**. Network responsibility¹ extends beyond individual or organizational actions and considers the broader network of stakeholders involved in providing and maintaining healthcare services.

This thesis argues for the implementation of **network responsibility** in the Spanish mental healthcare system. By adopting this approach, it acknowledges that improving mental health outcomes necessitates collaboration and shared responsibility among various stakeholders, including public health institutions, private sector providers, policymakers, educational institutions, and the community at large.

4. Problem statement

The current framework within the Spanish National Healthcare System primarily covers extensive treatments for severe mental health disorders and hospitalizations but falls short in providing comprehensive mental health care. In addition to the little budget Spain assigned for the healthcare sector, a discriminatory gap has been created where Spaniards who can afford to go to the private sector can get mental health care whilst the rest have to accept the fact that they

¹ Network responsibility paper

will not get help for several months. This cycle of neglect and delayed care may escalate these conditions into more severe disorders. The limited coverage exacerbates social inequalities and fails to comply with the holistic health protection as stipulated in the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Rights of Persons with Disabilities (CRPD).

5. Novelty of the research

This thesis introduces an innovative approach by presenting numerous mental health AI-driven applications and proposing the integration of AI tools to help unclog the bottleneck waiting list in public mental health services. It explores the potential of AI technology to provide personalized mental health care, education, diagnosis and treatment, which could potentially be used within Spain's public healthcare system.

Two of the main proposed ideas for a solution are: (a) personalized mental health education by providing an AI chatbot, as an app, for people to receive feedback on their thoughts, making them more self-aware and eventually, developing their emotional intelligence (EQ). (b) assistance in diagnosis and treatment through an AI- powered Chatbots connected to institutional health apps like “Salud Responde” in the Autonomous Community (AC) Andalucía, to help doctors diagnose more accurately mental disorders due to the history of indicators in the conversations of the patient with the chatbot.

Implementing AI technologies in mental health care could transform the current paradigm by making mental health services more accessible, reducing wait times, and preventing the escalation of untreated conditions. By improving understanding and management of mental health at an individual level, AI technologies can contribute to better overall health outcomes, aligning with both national and international human rights obligations.

Critical healthcare needs must not be ignored when there is technological innovation that aligns with the concerns at hand. The study seeks to outline a viable pathway for integrating AI technologies in public health strategies, ensuring that the benefits of innovation lead to tangible improvements in the quality of life and health care access for all Spaniards.

6. Objectives

Addressing the complex issue of mental health care within Spain's healthcare system requires a multifaceted approach. This thesis aims to tackle the problem from different angles through the following objectives:

Objective 1. To analyze the current limitations of Spain's mental health care legal framework in addressing non-severe mental health conditions.

Objective 2. To explain stigmatization around mental health, especially in Gen Z context.

Objective 3. To understand the legal framework of Spain for the right to mental healthcare.

Objective 4. To explore the integration of AI technologies that can enhance mental health education, diagnosis and treatment and recommend ways to improve mental health in Spain.

7. Methodology

This thesis employs a combination of academic research methods to comprehensively analyze and propose solutions for enhancing mental healthcare services in Spain. The primary methods used are analytical, historical, comparative, and empirical approaches. The analytical method involves breaking down complex legal and healthcare information to identify gaps and relationships within the existing framework. The historical method examines the development and evolution of mental healthcare policies in Spain, providing context and understanding of current issues. The comparative method has contributed to identifying best practices and areas for improvement looking at other countries' initiatives, and even among ACs. The empirical method includes collecting and analyzing qualitative and quantitative data through observations, using AI tools for mental health purposes and interviews to gain real-world insights and evidence.

In addition to these traditional academic research methods, this study utilizes desk research combined with a qualitative approach from the semi-structured interviews conducted and a Network Governance approach. Desk research involves the systematic review of existing literature, legal documents, and government reports to gather relevant data and insights. The qualitative approach includes conducting semi-structured interviews with mental healthcare professionals, AI experts, and legal scholars to obtain detailed perspectives on the challenges and

potential solutions for integrating AI into mental healthcare. The Network Governance approach involves the use of institutions –NHS, ACs’ Governments– and structures of authority and collaboration to allocate resources and to coordinate and control joint action across the network as a whole.

This mixed-method approach ensures a comprehensive and well-rounded analysis of the current state of mental healthcare in Spain and the feasibility of proposed AI-driven solutions.

8. Structure of the thesis

This thesis is structured in five Chapters to provide a comprehensive analysis and solution-oriented approach to the challenges faced by Spain's mental healthcare system, particularly focusing on Generation Z in the aftermath of the COVID-19 pandemic. The research aims to highlight the transformation of mental healthcare from a luxury to a necessity and explore how AI-powered solutions and legal reforms can ensure it becomes a guaranteed fundamental right.

Chapter I ‘The limitations of Spain’s mental healthcare legal framework’ delves into the historical evolution and modern challenges of mental health legislation in Spain. It examines the right to health as recognized by the NHS, highlighting the legal provisions and frameworks that currently exist. The chapter also addresses the troubled access to mental healthcare services, emphasizing the deficiencies exposed by the pandemic, particularly for Generation Z. It concludes by underscoring the discriminatory gap in mental health services, with a focus on socio-economic disparities.

Chapter II ‘Stigma and destigmatization’ explores the pervasive issue of mental health stigma in Europe and Spain. It discusses the impact of stigma on mental health outcomes and access to care, and the exacerbation of these issues during the COVID-19 pandemic. The chapter highlights efforts to overcome stigma, including public education, policy changes, and support systems. It also examines the role of popular culture, such as the movie "Inside Out," and the proactive stance of Generation Z in opening up about mental health. The chapter emphasizes the importance of destigmatizing mental health to improve overall care and support.

Chapter III ‘From a luxury to a fundamental right, a legal analysis’ provides a thorough examination of the constitutional and national legal frameworks underpinning the right to mental healthcare in Spain. It discusses the ethical considerations and international standards –WHO Guidelines, Goal 3 of the 2030 Agenda for Sustainable Development –, EU and international legal frameworks. The analysis identifies the gaps in the current legal framework and proposes pathways to recognize mental health as a fundamental right. This chapter is crucial in establishing the legal basis for advocating comprehensive mental health care reforms in Spain.

Chapter IV ‘The possibilities AI offers in the mental health field’ introduces innovative solutions to address the identified gaps in Spain's mental healthcare system. It emphasizes the transformative potential of AI-powered tools in education, prevention, and diagnosis of mental health issues. The Chapter outlines legal reforms and policy changes needed to enhance mental health services, including the integration of AI solutions. As part of the network responsibility it also discusses community-based and preventive approaches, enhancing accessibility and affordability of mental health care.

The final chapter ‘Conclusions and Recommendations’ summarizes the research findings and proposes actionable recommendations for policymakers, healthcare providers, and other stakeholders. It underscores the necessity of recognizing mental health as a fundamental human right and the potential of AI-powered solutions to bridge the existing gaps in mental healthcare. The Chapter aims to provide a clear roadmap for improving mental health services in Spain, ensuring equitable access, and fostering a supportive environment for all individuals, particularly Gen Z.

By following this structure, the thesis systematically addresses the complexities of mental healthcare in Spain, provides a detailed legal analysis, and proposes innovative solutions to ensure mental healthcare becomes a fundamental right accessible to all.

9. Scope – legal and territorial

The study will focus on Spain, examining national laws and healthcare policies, along with relevant international treaties and agreements like the Charter of Fundamental Rights of the European Union (CFR), the International Covenant on Economic, Social and Cultural Rights

(ICESCR) and the Convention on the Rights of Persons with Disabilities (CRPD), to which Spain is a signatory, as well as international standards.

10. Target audience

This research is intended for a broad audience, including the general public, Gen Z, persons with psychosocial disabilities, policymakers, service providers, corporate stakeholders, and anyone interested in optimizing mental health through new technologies and particularly, Artificial Intelligence.

The primary audience comprises policymakers and legislators who have the power to influence and enhance mental health policies, as well as academic researchers and public health officials who can contribute to the development and implementation of these policies. The secondary audience includes AI technology developers and mental health NGOs, who play crucial roles in creating and advocating for innovative solutions in mental health care.

A meaningful engagement of different stakeholders—including people with lived experience—in debates and decisions on digitalization and mental health is fundamental. By targeting these groups, the research aims to foster a collaborative effort to improve mental health services, leveraging digital advancements to meet the needs of diverse populations, aligning with the Networking Governance methodology. This approach ensures balanced policies and innovation while guarding against exacerbating health inequalities in society.

CHAPTER I: The limitations of Spain’s mental health care legal framework

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I.1. Historical evolution and the modern challenges of mental health legislation

Legislation on mental health has changed considerably during the past 150 years. While the origins of Western mental health law can be traced back to the Middle Ages, its expansion was consolidated during the nineteenth and twentieth centuries (Noble, 1981). This development occurred in parallel with the evolution in understanding of mental health disorders, treatment perspectives, and human rights standards. Before mental healthcare was even a term, the roots of a deeply religious society helped the Spanish citizen talk about his issues during confession. In church, one may begin the confession with the words: “*Bless me, Father, for I have sinned ...*” while in the psychiatrist’s office, the patient starts to speak with “*I’m worried about ...*”.

For many centuries, Roman Catholics have gone to confession as part of their journey to lead lives of greater virtue and, ultimately, salvation. During early periods, mental health issues were often viewed through a spiritual or moral lens. At the beginning of the early Church, all sins had to be removed through public penance. In the sixth century, public penance was increasingly replaced by individual confession to a spiritual guide, such as a monk or priest. The modern Church’s understanding of confession remains traditional in its doctrinal aspects, but its focus has shifted more toward its pastoral and spiritual aspects. (Leung & Leung, 2009). Confession served as a rudimentary form of counseling, where individuals could seek solace and guidance from clergy members. This religious approach to mental health reflected the broader societal norms and the limited medical understanding of mental illnesses at the time.

Modern mental health legislation began in the late 19th century, influenced by movements for more humane treatment and later, by the principles of patient autonomy and human rights (Gostin, 2008). The establishment of asylums marked a significant shift in the approach to mental health care. These institutions aimed to provide more structured care for individuals with mental illnesses, although the conditions and treatments varied widely. (Noble, 1981). Spain's legislative efforts reflected these changes, aiming to provide more comprehensive care and support for individuals with mental health conditions. These efforts were driven by a growing recognition of the need to protect patients' rights and to integrate mental health services into the broader healthcare system.

Despite these advancements, challenges remain. The legacy of past practices and societal stigma continues to impact the perception and treatment of mental health issues.

Nowadays, mental health care is a recognized field that integrates medical, psychological, and social approaches to treatment and support. This shift reflects broader societal changes and advancements in our understanding of mental health.

I.2. The right to health and the NHS

Article 43 of the 1978 Spanish Constitution recognizes the **right to health protection** and establishes that the **public authorities are responsible** for organizing and protecting public health through preventive measures and the necessary benefits and services. The fundamental principles and criteria governing the exercise in Spain of this right are regulated by the General Health Act 14/1986, as follows:

- public financing, universal coverage and free health care services at the time of use;
- specific rights and duties for citizens and public authorities;
- political devolution of health service management to the Autonomous Communities;
- comprehensive health care services provided to high standards and appropriately monitored and evaluated;
- integration of different health service networks under the National Health System structure.

This led to the creation of the National Healthcare System (NHS). As Spain is a decentralized country, this System works under the coordination between the central government and the Autonomous Communities (ACs). Each ACs –including Autonomous Cities Ceuta and Melilla–, has a regional health service, which is the administrative and management body responsible for all the centers, services, and facilities in its Community, whether these are organized by regional or town councils, or any other intra-community administration. (Ministry of Health and Consumer Affairs, 2008, p. 19)

Figure 2.

Distribution of health care powers and duties as established by the 1978 SC, the General Health Act 14/1986 of 25 April, and Act 16/2003 of 28 May on Cohesion and Quality of the National Health System. (Ministry of Health and Consumer Affairs, 2008).

NHS							
<p>Powers and responsibilities</p>	<table border="1"> <tr> <td>Central Government</td> <td> <ul style="list-style-type: none"> basic principles and coordination of health affairs international health pharmaceutical policy management of the National Health Management Institute (INGESA) </td> </tr> <tr> <td>Autonomous Communities</td> <td> <ul style="list-style-type: none"> health planning public health management of health services </td> </tr> <tr> <td>Local Councils</td> <td> <ul style="list-style-type: none"> health and hygiene collaboration in the management of public services </td> </tr> </table>	Central Government	<ul style="list-style-type: none"> basic principles and coordination of health affairs international health pharmaceutical policy management of the National Health Management Institute (INGESA) 	Autonomous Communities	<ul style="list-style-type: none"> health planning public health management of health services 	Local Councils	<ul style="list-style-type: none"> health and hygiene collaboration in the management of public services
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	<p>NHS Interterritorial Council</p>						

Universal coverage and free health care services is one of the main characteristics of the NHS. What does it cover, and where is the right to mental healthcare foreseen?

The NHS names the set of techniques, technologies, and procedures based on scientific knowledge and experimentation by which the health care services are made effective as the ‘portfolio of common services’. This is outlined in Article 2 of Royal Decree 1030/2006 from the

15th of September. Not only it outlines a portfolio of common services of the National Health System, it also sets out the procedure for updating it.

The services contained in the portfolio of common services are considered to be basic and common, meaning that they are understood as **those necessary to provide adequate, comprehensive and continuous healthcare to all users of the National Health System**. The portfolio of common services of the National Health System *shall guarantee* comprehensive care and continuity of care provided to users, regardless of the level of care at which they are being attended at any given time. (Article 3).

The III Annex lies out the specialized care of public healthcare services established in Article 6. Section 7 of Annex III establishes that mental health care “*includes the diagnosis and clinical follow-up of mental disorders, psychopharmacotherapy, individual, group or family psychotherapies (excluding psychoanalysis and hypnosis), electroconvulsive therapy and, where appropriate, hospitalization. Mental health care, which shall guarantee the necessary continuity of care, includes:*

7.1 Preventive and mental health promotion actions in coordination with other health and non-health resources.

7.2 Diagnosis and treatment of acute mental disorders and exacerbations of chronic mental disorders, including outpatient treatment, individual or family interventions and hospitalisation when necessary.

7.3 Diagnosis and treatment of chronic mental disorders, including comprehensive care for schizophrenia, covering outpatient treatment, individual and family interventions and rehabilitation.

7.4 Diagnosis and treatment of addictive behaviours, including alcoholism and pathological gambling.

7.5 Diagnosis and treatment of psychopathological disorders in childhood/adolescence, including care for children with psychosis, autism and behavioural disorders in general and eating disorders in particular (anorexia/bulimia), including outpatient treatment, psychotherapeutic interventions in day hospital, hospitalisation when necessary and reinforcement of healthy behaviours.

7.6 Care for mental health disorders arising from situations of risk or social exclusion.

7.7 Information and counseling to the persons related to the patient, especially the main carer.”

As evidenced by this provision, severe mental disorders such as schizophrenia, chronic disorders, addictions, psychopathological disorders and those arising from risky situations are fully covered by the NHR. Individuals with these conditions are provided diagnosis and treatment, and hospitalization if needed. However, **non-severe mental health issues are not guaranteed to be treated.**

I.3. The troubled access to mental healthcare services

Furthermore, the primary care, which is the first point of contact for individuals with mental health issues, lacks the resources and time to provide the comprehensive care required, according to the Report on the State of Human Rights in Mental Health of 2022 by Confederation MENTAL HEALTH SPAIN published on September 2023.

This type of care demands a much broader approach than what is currently available. **Referrals to specialized psychological and psychiatric care are significantly delayed**, as previously evidenced by the image 1 in the Introduction. These delays occur not only due to the time it takes to reach detection, as previously mentioned, but also because of the long waiting lists, which are typically around **three to four months or even longer**. In this situation, Spaniards seem to have three options:

1. To wait months for an appointment with an adequate doctor;
2. To take psychotropic drugs prescribed by their primary care doctor or;
3. To turn to private healthcare if they have the financial means to afford it.

None of these options are sufficient. People that are less resourceful and therefore are not able to afford to go to the private sector for mental healthcare are being discriminated against.

The first option, waiting, being condemned to live with a mental disorder or the uncertainty for months is not really an option for everybody. Already in 2019, Spain was the second country of the European Union with the highest number of people diagnosed with depression. Nel Zapico, president of the Confederation of MENTAL HEALTH SPAIN, explains the importance of these

high rates, especially the number of people with depression: *“It’s a scourge because it often leads to quite dramatic outcomes related to suicide.”* (Pagar o esperar, 2021).

A report by the Ombudsman in 2021 (Defensor del Pueblo, 2021) highlights significant delays and disparities in access to mental health services, with some regions experiencing the following waiting times:

- Andalusia: 26.7 days/first consultation.
- Aragon: estimate of 500 patients waiting for psychological care with an average wait time of 60 days.
- Asturias: As of December 1, 2018, there were 321 patients waiting, with an average wait time for a consultation at a mental health center of 26 days.
- Balearic Islands: The overall average delay for psychology in these hospital services is 23.21 days. The average delay for consultations in each mental health unit is noted using a different software application, with a general average of 62.86 days.
- Cantabria: Data on patients waiting and delays per center offering psychological care are provided: 849 patients (91.48 days), 549 patients (62.6 days), 63 patients (21.15 days, adults, and 15 days, children and adolescents).
- Castilla-La Mancha: 45-day delay.
- Galicia: as of December 31, 2018, 10,578 patients were waiting for a psychology consultation, with a community-wide average wait time of 61.1 days.
- Region of Murcia: Data on delays to the first and second psychology consultations for various programs are provided. For the first consultation: Adult, 1,325 patients with an average wait time of 71.4 days; children and adolescents, 361 patients with 79 days; drug dependency, 14 patients with 52.5 days; for rehabilitation, no patients are waiting, but an average of 30 days. For the second consultation: Adult, 2,144 patients waiting with an average of 43.4 days; children and adolescents, 211 patients with 28.1 days; drug dependency, 60 patients with 15.8 days; for rehabilitation, no patients are waiting, but an average of 37 days.
- Navarra: The data as of December 31, 2018, show 173 adult patients waiting with an average of 53.42 days and 105 child and adolescent patients with an average of 34.62 days.

It is evident that the data from the different ACs is quite heterogeneous and some were not able to collect their information in due time.

The second option is being precariously prescribed medications. In the words of Javier Prado, spokesperson for the National Association of Clinical and Resident Psychologists in Spain (ANPIR); *“You go to your primary care doctor in Madrid and are told, 'Well, you might need a clinical psychologist,' but there is a six-month waiting list. So, they say, 'Start taking this' or 'If you can afford it, go private.'”* (Pagar o esperar, 2021). This is the bandaid option. You take medication without a prior diagnosis, because you cannot afford otherwise and this might lead to greater issues, for instance transforming it into a chronic disorder.

The third option, turning to the private healthcare sector, bridges the lack of resources in the public NHS, but it is not accessible to everyone. *“Mental health is like dentistry. In most European Union countries, all your physical health issues are covered, but you have to pay extra to see a dentist, and the same goes for mental health care”* explains Marcin Rodzinka, spokesperson for the association Mental Health Europe. (Pagar o esperar, 2021). This creates a discriminatory gap, as those without sufficient financial means are left without access to essential mental health services, further exacerbating social inequalities.

I.4. The pandemic exposing the deficiencies of the system

Before COVID-19 spread, Spain was already at the end of the line in mental healthcare investment. According to WHO data from 2011, Spain allocated only 5% of its total healthcare expenditure to mental health. This amount is insufficient to meet the costs of caring for people with mental health issues, who make up 18% of the population.

Spain also ranks low in Europe for the number of psychiatrists, with only 10 per 100,000 inhabitants in 2017, below the European average and far behind Germany's 27.

Data also shows a shortage of clinical psychologists in Spain, who represent only 13% of the total number of healthcare psychologists. To match the OECD average ratio of clinical psychologists, Spain would need a 300% increase. (UNICEF Spain, 2020, p. 18).

This post-pandemic situation is objectively untenable.

On the 11th of March 2019, the WHO determined that COVID-19 had the characteristics to be considered an international pandemic. A few days later, the Royal Decree 463/2020, of March 14, which declares the state of alarm for the management of the health crisis situation caused by COVID-19, was published in the Official State Gazette. It declared a ‘state of alarm’ to address the health emergency situation for 15 days. This situation was extended until the 21st of June.

On April 28, the Spanish government announced a de-escalation strategy that began on May 2. This plan was divided into four phases, gradually implemented based on the epidemiological situation in each province.

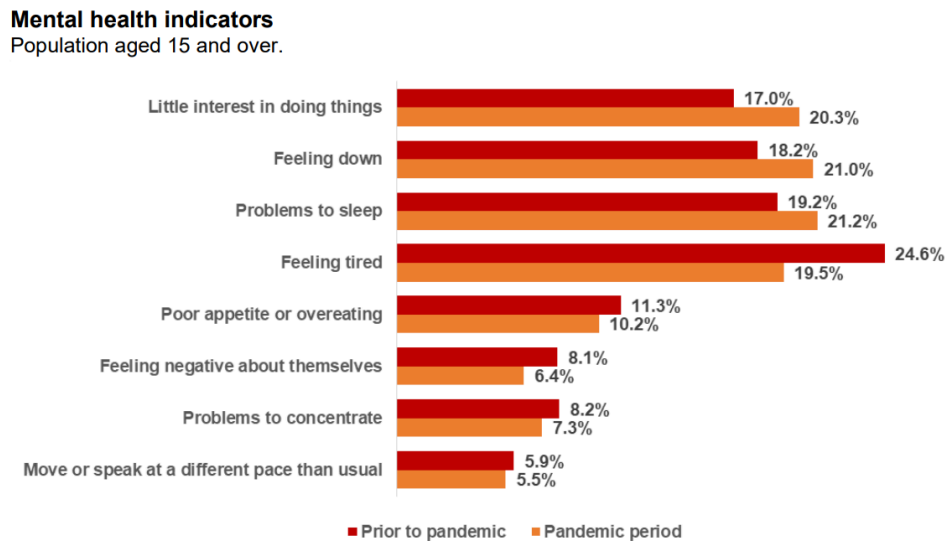
It is not subject of this research to assess whether the measures taken by the Government of Spain were ideal or not. Social isolation and quarantine during COVID-19 pandemic were effective measures with the aim of safeguarding lives. However, these measures brought an important cost for mental health. According to Brooks et al. (2020), quarantines are associated with negative psychological effects, including symptoms of post-traumatic stress, confusion, and anger. The objective of this research is to demand of the Spanish Government to take action and dedicate sufficient fundings to mental healthcare. Monitoring psychological reactions derivative of movement’s obligatory restrictions during COVID-19 pandemics must represent a priority for all health systems. (*Broche-Pérez, Y., 2021*).

Various national and international studies² have shown increased **anxiety and depressive disorders**. During the pandemic (March 2020 to July 2020), about 20.3% of the population reported a lack of interest or joy in activities, and 21.0% felt down during the pandemic, with women reporting these issues more frequently than men. Sleep problems also increased in the first months of the pandemic. Of people aged 15 and over, 21.2% had sleeping issues, compared to 19.2% prior to the pandemic. (*INE, 2021*). On occasion, symptoms compatible with **post-traumatic stress disorder** appeared. We can safely affirm that the pandemic exacerbated mental health issues, increasing the prevalence of sleep problems and feelings of depression and anxiety among the population.

Figure 3.

²CIS surveys on “the mental health of Spaniards during the COVID-19 Pandemic” and the “European Health Survey in Spain” (EHS) 2020.

Mental Health indicators (INE, 2021, p. 12)



An increase in **self-injurious behavior** was reported. Similarly, there was an increase in **somatization disorders** and the **decompensation of pre-existing clinical conditions**, such as **eating disorders**, **psychotic conditions**, and **addictive behaviors** (especially non-substance addictions, such as screen devices or online gambling).

The impact the pandemic has had in the Spanish population is undeniable. Since the pandemic began, it is estimated that 6.4% of the population has sought help from a mental health professional, **mostly for depression and anxiety** as previously said, and in 2020, **a total of 3,941 people committed suicide, the highest number in history at that time according to the National Institute of Statistics (INE)**. (SALUD MENTAL ESPAÑA, 2023, p. 63). Number that continued to rise in 2021 with 4.003 suicides and 2022 with 4.227 suicides. In 2023 the number of suicides was 3.952, which may seem positive but it is still higher than in the year 2020 when the Spanish population reached the first peak post-COVID.

Figure 4.

Number of suicides by gender in Spain, 2000-2022. Chart by the Spanish Foundation for suicide prevention.



Additionally, it has been suggested that women and young people are the most vulnerable groups to the adverse effects of the pandemic on mental health (Sediri et al., 2020).

In Spain, on average, five out of every 100 people are diagnosed with depression, the same percentage as those with anxiety disorders. However, these figures are not an exact reflection of reality. Not everyone who needs treatment for anxiety or depression receives it or is even diagnosed. These two mental health problems are the most common. They should not be underestimated, as often happens: "If they are not treated promptly and appropriately, they end up causing significant disability," clarifies Javier Prado, spokesperson for the National Association of Clinical and Resident Psychologists in Spain (ANPIR). (*Pagar o esperar*, 2021).

I.5. The lockdown, Gen Z and a discriminatory gap

“Years after the first wave of coronavirus disease 2019 (COVID-19), one fact seems to be emerging clearly: lockdowns affect mental health differently across generations.” (Mattia Vacchiano, 2022).

The lockdown measures implemented to curb the spread of COVID-19 disrupted daily routines, social interactions, and educational pursuits, leading to heightened levels of anxiety, depression, and stress among Gen Z. Studies conducted during the first lockdown indicate that Gen Z experienced significant psychological distress. The enforced isolation and abrupt transition to online education created a sense of uncertainty and disconnection. In Spain, the situation was particularly dire as the country faced one of the strictest lockdowns in Europe. The closure of schools, universities, and social spaces deprived young people of essential social support networks, which are crucial for maintaining mental health.

The pandemic significantly altered the social dynamics and lifestyles of Gen Z. The lack of face-to-face interactions with peers and mentors led to feelings of loneliness and social isolation. In Spain, where social gatherings and outdoor activities are integral to the culture, the restrictions severely impacted the social lives of young people. The shift to virtual communication could not fully substitute for in-person interactions, leading to a deterioration in social capital. (Kushwaha, B. P., 2021). Gen Z reported concerns about their lifestyle changes and the inability to engage in typical social activities, which are critical for emotional well-being. The sudden move to online learning presented significant challenges for Gen Z in Spain. Technical issues, lack of access to necessary resources, and difficulties in adapting to new learning environments exacerbated stress and anxiety levels. Additionally, the pandemic created uncertainties regarding career prospects and job security, adding to the mental burden. (Harari et al., 2022). The economic impact of the pandemic, with rising unemployment rates and an unstable job market, further contributed to the anxiety and uncertainty experienced by this generation.

The lockdown also had a noticeable impact on eating behaviors and body image among Gen Z. (Ioannidis, K. et al., 2022). Disruptions to daily routines, increased time spent on social media, and the stress of the pandemic contributed to unhealthy eating habits and heightened body image concerns. Studies have shown an increase in the prevalence of eating disorders among

adolescents and young adults during the pandemic. In Spain, the situation was mirrored with significant reports of deteriorating eating habits and increased anxiety related to body image.

The COVID-19 pandemic has highlighted and exacerbated the mental health challenges faced by Gen Z in Spain. The intersection of social isolation, educational disruption, and economic uncertainty has created a perfect storm, significantly impacting the mental well-being of this generation.

Individuals without the financial means to access private healthcare have found themselves disproportionately disadvantaged. Public mental health services, already underfunded and overstretched, have been unable to meet the surging demand, resulting in long wait times and inadequate care. This has forced many to turn to private healthcare for timely and comprehensive mental health support. However, for those without sufficient resources, the cost of private treatment is prohibitive, effectively creating **a two-tiered system where the wealthy can access the care they need while the less affluent are left to struggle**. This form of discrimination underscores the urgent need for systemic reforms to ensure equitable access to mental health services for all, regardless of economic background.

I. 6. Interim conclusion

Despite the well-documented need for mental health services, Spain's National Health System (NHS) remains woefully inadequate in providing accessible and comprehensive mental health care. Despite a high prevalence of mental health issues, including anxiety and depression, especially among Gen Z, access to mental health services remains limited and inequitable. The government's response has been inadequate, with long waiting times and insufficient public resources driving many to seek private care, which is prohibitively expensive for a significant portion of the population.

The government bears significant responsibility for ensuring that mental health services are available and effective, a duty that has become even more pressing in the wake of the pandemic. However, the existing public mental health infrastructure is overburdened and underfunded, leading to long wait times and inadequate care.

The lockdowns and social isolation measures have further strained mental health, particularly affecting younger generations who already face significant economic and social pressures. Gen Z, in particular, has experienced heightened levels of anxiety, depression, and stress, compounded by the disruption of educational and career plans. This demographic, more than others, has been left to navigate a fragmented and inaccessible mental health system. The Spanish healthcare system, already strained before the pandemic, struggled to meet the mental health needs of the population during the crisis.

This inadequacy forces many individuals, particularly young people from Gen Z, to seek help in the private sector. Yet, the high costs of private mental health services create a barrier that is insurmountable for those without financial resources. **The economic disparity in access to mental health care highlights a profound issue of discrimination. For many, especially those from lower socio-economic backgrounds, mental healthcare has become a luxury rather than a basic human right.** The inability to afford private mental health services has left the most vulnerable without necessary support, perpetuating a cycle of inequality and mental health deterioration.

The pandemic has underscored the urgent need for reform in Spain's mental health services. **It is imperative to reframe mental healthcare as an essential, accessible service rather than a luxury.** The reliance on private healthcare for those who can afford it, contrasted with the lack of options for those who cannot, creates a two-tiered system that perpetuates inequality and neglects the fundamental right to mental health care.

CHAPTER II: Stigma and destigmatization

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Mental health stigma is a pervasive issue that affects individuals and communities across Europe, including Spain. This chapter delves into the nature of stigmatization in Europe and Spain, explores the impact of the COVID-19 pandemic on mental health stigma, and discusses strategies to overcome stigma. Additionally, it examines the role of popular culture, specifically the movie "Inside Out," in changing perceptions, and highlights how Generation Z is contributing to the dialogue around mental health.

II.1. Stigmatization: at a global, european and national level

Stigma surrounding mental health remains a significant issue, compounded by cultural and societal factors. It constitutes a significant barrier to accessing care and achieving positive health outcomes. In Europe, mental health stigma varies by country, but common themes include negative stereotypes, discrimination, and social exclusion. The presence of stigma in moderate and high proportions in various population groups in Greece was studied by Tzouvara et al. (2016). In the Nordic Countries studies focused on the system, and interventions to reduce stigma are scarce. Meanwhile in Germany, although there has been an increase in mental health literacy and acceptance of professional help, no improvement in attitudes has been observed (Angermeyer & Schomerus, 2017).

Mental health issues are often misunderstood, leading to misconceptions that individuals with mental health conditions are dangerous, unpredictable, or weak. This misconception is exemplified even by the ECHR, created in 1949, containing the lawful detention of the very wide and undefined concept of “*persons of unsound mind*” –article 5 on the right to liberty and

security—. This stigma can result in discrimination in various areas, including employment, education, and, of course, healthcare.

Stigmatization deters people from seeking help, leading to untreated mental health issues. It also affects the quality of care provided, as healthcare professionals may harbor stigmatizing attitudes. It is important to take action for destigmatizing mental health issues. Efforts to combat stigma in Europe include public awareness campaigns, policy initiatives, and educational programs. Despite the growth of mental health literacy, this does not translate into improved social acceptance (Angermeyer & Schomerus, 2017). This is why the work of organizations like Mental Health Europe to promote mental health as a fundamental human right and advocate for the inclusion and support of individuals with mental health conditions is crucial to eradicate stigma.

Stigma on mental health disorders is present in different countries and cultures. For example, in the United States, perceptions of dangerousness were significantly associated with social distance (Parcesepe & Cabassa, 2013). In South America it was established that the influence of family, dignity and respect, or even gender, are extremely important factors in stigmatization (Mascayano et al., 2016). In Asia, the presence of common elements in several countries is pointed out, as well as the importance of stigma in the request for professional help, the need to support families and to develop anti-stigma campaigns .

In Spain, a recent study (Zamorano et al., 2023) found similar results to other European countries, with higher levels of stigma in older people. Despite improvements in public awareness, many individuals still face prejudice and discrimination. Traditional views on mental health in Spain often emphasize strength and stoicism, which can discourage individuals from admitting to or seeking help for mental health issues.

The pandemic has exacerbated mental health problems and brought to light the vulnerabilities of certain groups. According to a study by the Instituto de Salud Global Barcelona, the pandemic increased the prevalence of mental health issues among caregivers, unskilled workers, COVID-19 patients, and frontline healthcare workers. Younger adults, particularly those under 42, showed lower resilience and higher rates of anxiety, depression, and eating disorders.

Public campaigns and initiatives by organizations like Confederación SALUD MENTAL ESPAÑA aim to challenge these stigmas and promote a more supportive environment for those with mental health issues.

II. 2. Overcoming the stigma

Overcoming mental health stigma requires a multifaceted approach, including public education since increasing awareness and understanding of mental health through media campaigns, school programs, and community initiatives can help change public attitudes. It also includes policy changes as legal protections and anti-discrimination laws are crucial in ensuring that individuals with mental health conditions receive fair treatment. The section “Challenging Stigma and Discrimination” in the Mental Health and Human Rights Legislation report emphasizes the need for comprehensive policies that address stigma and promote inclusion. Last but not least, support systems are deemed to be crucial. Providing stable support systems, including mental health services, community support, and peer networks, helps individuals feel less isolated and more empowered to seek help.

The movie “Inside Out” and “Inside Out 2” is an excellent example of how popular culture can influence public perceptions of mental health. The film provides a nuanced portrayal of emotions, illustrating that experiencing a range of emotions is normal and healthy. It helps demystify mental health by showing that everyone goes through emotional struggles. By engaging viewers, especially younger audiences, Inside Out educates about mental health in an accessible and relatable way. It encourages open discussions about emotions and mental health, contributing to the destigmatization process.

II. 4. Generation Z in Spain: opening up about mental health

Generation Z is playing a crucial role in changing the conversation around mental health. Known for their openness and activism (Feger, n. d.), Gen Z is breaking down barriers and advocating for mental health awareness and support.

Social Media Influence

Platforms like Instagram, TikTok, and Twitter are used by Gen Z to share personal stories, promote mental health resources, and challenge stigma. These platforms provide a space for peer support and community building. For instance:

On Instagram:

- **@saludmental_fm**: this account run by Fundación Manantial shares personal stories, mental health tips, and resources specifically targeting younger audiences.
- **Influencers**: influencers such as Dulceida (Aida Domenech) have openly discussed their own mental health struggles on Instagram, helping to destigmatize these issues among their followers.

On TikTok the trend **#SaludMental** is used by young Spaniards to share their mental health experiences under hashtags like #SaludMental, #Ansiedad, and #Depresión. These videos range from personal stories to tips on managing anxiety and depression

On YouTube Channels: Spanish YouTubers like RoEnLaRed discuss mental health topics openly, providing a platform for Gen Z to engage in conversations about their own mental health.

Many Universities such as Universidad Complutense de Madrid and Universidad de Barcelona have expanded their mental health services, providing more counseling and psychological support to students. In addition to that, universities often host Mental Health Awareness Weeks, featuring events and activities designed to promote mental wellness and reduce stigma.

Furthermore, there are online mental health resources like apps and online platforms to help people. *Sinews* is an online platform that provides psychological support and therapy services in multiple languages, making it accessible to a diverse student population. *Previ* is an app developed in Spain that offers mental health resources, including guided meditations, cognitive-behavioral therapy exercises, and crisis support.

Moreover, many young people are involved in mental health advocacy, pushing for better policies, funding, and services. Their efforts are crucial in shaping a future where mental health is prioritized and supported. Organizations like Jóvenes por la Salud Mental are led by young people advocating for better mental health services and policies. They organize events,

campaigns, and provide resources to their peers. And then there are bigger NGOs such as: **Fundación ANAR** that offers a confidential helpline for young people dealing with mental health issues, providing immediate support and guidance and the aforementioned Confederation MENTAL HEALTH SPAIN.

There are celebrities speaking out about their mental disorders to normalize this diseases:

- **Álvaro Soler**: the singer has spoken openly about his struggles with anxiety and depression, encouraging his fans to seek help and speak openly about their mental health.
- **Amaia Romero**: the singer and former “Operación Triunfo” contestant has used her platform to discuss mental health, particularly the pressures of fame and its impact on mental well-being.
- **Blanca Suárez**: the actress has spoken about her struggles with anxiety and the importance of mental health care, sharing her experiences to raise awareness and support others facing similar issues.
- **Miguel Herrán**: known for his roles in “Money Heist” and “Elite”, Herrán has posted on social media about his battles with depression, aiming to break the stigma and promote mental health awareness.
- **Rosalía**: the internationally acclaimed singer has mentioned the importance of mental health in her interviews, highlighting the pressures of the music industry and the need for self-care.
- **Ana Mena**: the singer and actress has openly discussed her experiences with anxiety, emphasizing the significance of mental health care and support.

By leveraging social media, educational initiatives, online resources, community programs, and public advocacy, Generation Z in Spain is actively breaking down the stigma surrounding mental health.

Several international initiatives and movements exemplify the positive impact of open discussions about mental health on an international level as well. Time to Change (UK) is a campaign that encourages people to talk about mental health, aiming to reduce stigma through personal stories and community engagement. Let's Talk (Canada) is an initiative by Bell Canada that raises awareness and funds for mental health programs, promoting open conversations about mental health.

Not to mention the spread of awareness through documentaries and films in platforms like Netflix:

- “*The Social Dilemma*”: this documentary-drama hybrid explores the dangerous human impact of social networking, with tech experts sounding the alarm on their own creations. It delves into how social media can contribute to mental health issues like anxiety and depression.
- “*Headspace: Unwind Your Mind*”: this interactive special from the creators of the popular "Headspace Guide to Meditation" series offers viewers a personalized relaxation experience, focusing on mindfulness and mental health.
- “*Take Your Pills*”: this documentary examines the use of prescription stimulants like Adderall and Ritalin among college students, professionals, and athletes, shedding light on the mental health implications of performance-enhancing drugs.
- “*Miss Americana*”: this documentary offers an intimate look at Taylor Swift's life, including her struggles with body image, eating disorders, and the pressures of fame, highlighting the importance of mental health.
- “*I Am Maris*”: this documentary follows the journey of Maris Degener, a teenage girl who overcomes anxiety and depression through yoga, offering an inspiring story of recovery and mental health awareness.
- “*Heal*”: this documentary takes viewers on a scientific and spiritual journey to discover how changing one's thoughts, emotions, and beliefs can affect health and healing, emphasizing the connection between mental and physical health.
- “*Mind Explained*”: this docuseries, narrated by Emma Stone, dives into topics like memory, dreams, anxiety, mindfulness, and psychedelics, providing a comprehensive overview of mental health and the workings of the mind.

II. 5. Interim conclusion

Addressing mental health stigma is essential for improving mental health outcomes and ensuring that individuals feel supported and able to seek help. By understanding the nature of stigma in Europe and Spain, exploring strategies to overcome it, and highlighting positive

examples and the role of Generation Z, this chapter provides a comprehensive overview of the challenges and opportunities in destigmatizing mental health.

Through continued efforts in education, policy, and advocacy, it is possible to create a more inclusive and supportive environment for all individuals dealing with mental health issues.

CHAPTER III: From a luxury to a fundamental right, a legal analysis

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The following legal analysis examines the constitutional provisions and relevant jurisprudence that underpin the right to mental healthcare in Spain. Mental healthcare, often relegated to a secondary status compared to physical healthcare, has emerged as a critical area of concern, especially in the aftermath of the COVID-19 pandemic as we have learned in previous Chapters. This analysis seeks to argue that mental healthcare should be recognized as a fundamental human right and not a luxury afforded only to those with the necessary financial means.

Is the right to mental healthcare not a fundamental right in the Spanish legal framework? What indicators and arguments can be marshaled to guarantee the right to mental healthcare as such? By examining the vast compilation of texts that refer to the right to health that compose the relevant legal framework in Spain –constitutional texts, international conventions, and key legal precedents– we aim to present: (1) The current constitutional and national legal framework for the right to healthcare and hence the right to mental healthcare, (2) The international legal framework and obligations (3) W.H.O. Guidelines including a mention to the 2023 Agenda for Sustainable Development, (4) Analysis of the current legal framework and propositions of reforms to recognize the right to mental healthcare as a guaranteed fundamental right in Spain and a human right in the international context.

This thesis aims to highlight the pressing need for legal reform and greater protection of the right to mental healthcare.

III. 1. Constitutional and National Legal Framework

The supreme legal text in the Spanish legal framework is the Spanish Constitution of 1978 which foresees the right to health protection in article 43 “*1. The right to health protection is recognized. 2. It is the responsibility of the public authorities to organize and safeguard public health through preventive measures and the necessary services and provisions. The law shall establish the rights and duties of everyone in this regard. 3. The public authorities shall promote health education, physical education, and sports. They shall also facilitate the appropriate use of leisure time.*”. The location in the SC means that rather than a fundamental right in a strict sense as those contained in articles 14 to 29 –concept of "fundamental rights" of the Constitutional Court–, health protection is a guiding principle of social and economic policy for the State. This article tasks public authorities with organizing and protecting public health through preventive measures and necessary services.

Therefore, the State is mandated to ensure comprehensive health protection, which would logically extend to mental health, especially in light of the pandemic's impact. As established in the Helsinki Declaration of the 2005 W.H.O. Ministerial Conference on Mental Health, “*there is no health without mental health*”. But, given that the Spanish Constitution classifies it as a guiding principle of social and economic policy, is health protection a fundamental right in the Spanish regulatory framework?

“*The law shall establish the rights and duties of everyone in this regard.*” (Article 43. 2). Spain has complied with its constitutional obligation by developing numerous regulations:

Law 14/1986 of 25 April 1986 on General Health mentions the promotion and improvement of mental healthcare under the II Chapter on Health System's Sanitary Actions (Article 18. 8). Also, Chapter III on Mental Health, contains one article: article 20 that is entirely dedicated to mental health focusing on integrating mental health services into the general healthcare system. It mandates community-based mental health care, enhancing ambulatory resources, partial hospitalization, and home care to minimize hospitalization. Special attention is given to child psychiatry and psychogeriatrics. Psychiatric hospitalization, when necessary, will occur in general hospital psychiatric units. Additionally, the article stresses the development of

rehabilitation and social reintegration services, coordinating with social services for comprehensive care, including primary prevention and psychosocial support.

Law 16/2003, of 28 May, is a law concerning the cohesion and quality of the National Health System. In its article 12 on primary care –the initial and fundamental level of healthcare– establishes that primary care should ensure comprehensive and continuous care throughout the patient's life. It includes, among others, mental healthcare in coordination with specialized services –another level of healthcare–. While primary care provides the initial and fundamental healthcare services, focusing on overall health promotion and disease prevention, specialized care offers more advanced, focused, and continuous treatment options for complex health conditions. Primary care also includes promoting health, health education, disease prevention, healthcare services, health maintenance and recovery, physical rehabilitation, and social work. Primary care covers urgent and scheduled care, diagnostic and therapeutic procedures, preventive and community health activities, health protection, basic rehabilitation, specific services for women, children, adolescents, adults, the elderly, at-risk groups, chronic patients, palliative care for terminal patients.

The Spanish government employs a decentralized model for healthcare, allowing autonomous communities to plan and organize services tailored to their specific needs. The Ministry of Health, along with the ACs, collaborates through the Interterritorial Council of the National Health System to develop comprehensive health plans, title of Article 64 of the Law 16/2003. These plans focus on prevalent and socio familial burdensome pathologies, ensuring comprehensive care including prevention, diagnosis, treatment, and rehabilitation. They set service organization criteria, minimum standards, and basic care models, aiming for consistent and effective healthcare across Spain. Autonomous communities implement these plans based on general standards, adapting to local particularities and needs.

Royal Decree 1030/2006, of 15 September, previously mentioned in the Introduction and Chapter I, outlines a portfolio of common services of the National Health System and the procedure for updating it. The decree highlights the importance of accessibility and equality in providing comprehensive mental health services to all citizens.

Spain joined the International Convention on the Rights of Persons with Disabilities in 2007, signed the document on 30th March and ratified the Convention on the 3rd of December. The ratification meant a reform on the Spanish legal framework, to adjust to the new understanding of equality of opportunities. So, Spain, approved the Law 26/2011, of 1 August, which explain how equality means the adoption of positive action measures aimed at avoiding or compensating for the disadvantages of a person with disabilities in order to participate fully in political, economic, cultural, and social life. It also approved the Royal Decree 1276/2011, of 16 September, concerning the adaptation of regulations to the CRPD. The general new principles were respect for the inherent dignity of the person, individual autonomy (including the freedom to make one's own decisions), independence of every human being, nondiscrimination, full and effective participation and inclusion in society, equal opportunities, respect for difference, and acceptance of persons with disabilities as a manifestation of diversity and the human condition.

Following the comprehensive legal framework outlined by various national laws, the Spanish Ministry of Health has developed the **Mental Health Strategy of the National Healthcare System 2022 - 2026**. This plan is designed to improve mental health services across Spain over a five-year period. It aims to enhance prevention, care, and social integration for individuals with mental health issues. To have early detection and effective care for people with mental health problems from the moment they appear, regardless of their age or level of development. Respect their rights and decisions, support the families of people with mental health issues, and promote a comprehensive community care model favoring recovery and social inclusion.

The strategy emerged from a recognition of the increasing mental health needs exacerbated by the COVID-19 pandemic and other social factors. It was developed through consultation with healthcare professionals, mental health experts, and stakeholders, aiming to enhance mental health care delivery, reduce stigma, and integrate mental health into general health services. Key objectives include:

1. Strengthening mental health services: Improve accessibility and quality of care.
2. Promoting community-based care: Reduce institutionalization and support integration.
3. Combating stigma: Increase public awareness and education.
4. Supporting vulnerable groups: Provide targeted interventions for high-risk populations.

The strategy also emphasizes the need for better coordination between health services and other social sectors.

Significant of the necessity to have an effective right to healthcare understood in a holistic sense so that it provides for mental healthcare, La Rioja, Autonomous Community in Spain, has been the **first Autonomous Community to ever approve a Law on Mental Healthcare** in March of 2023. The first Mental Health Law in La Rioja, Spain, known as **Ley 6/2023, de 22 de marzo, de las personas con problemas de salud mental y sus familias**, marks a significant step forward in the legal and social framework for mental health care.

This law sets out to ensure that all individuals with mental health issues, and their families, have access to comprehensive and quality treatment, protecting them from discrimination and inhumane treatment. It includes provisions for timely access to mental health services, minimum ratios of mental health professionals per population, and the development of public policies to promote mental health. This includes supporting first-person movements, implementing shared decision-making programs, and ensuring sufficient resources for quality care (Serrano, 2023).

As there's nothing resembling this new framework on a national level, the law requires a phased implementation that will take place during the next five years ensuring progressive attainment of established professional ratios and service provisions. Additionally, it mandates the evaluation of resource effectiveness and the continuous improvement of mental health services based on empirical data.

A significant aspect of the law is its emphasis on non-coercive care. It promotes voluntary admissions with the necessary information and alternatives to patients (Articles 17). It also implements external supervision and strict guidelines for any necessary coercive measures to ensure patient safety (Article 16).

Law 6/2023 establishes a Coordination Body for Mental Health and Addictions Policies to oversee and coordinate mental health policies and actions. This body is responsible for: policy implementation –ensuring effective execution of mental health policies–, resource allocation –allocating necessary resources and personnel for mental health services–, and intersectoral

coordination –promoting collaboration across different sectors, including health, social services, education, and employment– .

This brings us to the guarantees, which is the factor that marks a difference between claiming to make a change (Plan 2022-2026) and actually making a change (approval of a Mental Healthcare Law). The law emphasizes the importance of legal protections for individuals with mental health issues and their families in the following articles:

Article 6.1 states, “*People with mental health issues have the right to receive comprehensive and continuous care of the highest scientific and human quality available, ensuring their dignity, autonomy, privacy, and equality of rights.*” This ensures that individuals have the right to comprehensive, high-quality care that respects their dignity, autonomy, privacy, and equality.

Article 10.1 highlights the right to informed consent: “*Informed consent must be obtained after providing the user with adequate information about their diagnosis, treatment, and prognosis, as well as the available intervention alternatives.*” This ensures that patients are fully informed about their diagnosis, treatment, and prognosis before consenting to any medical procedures.

Additionally, the law provides **mechanisms for patients and families to appeal decisions and seek redress if their rights are violated.**

Article 14.1 states, “*People with mental health issues and their families have the right to file complaints and claims about the care received and to receive an appropriate response within a reasonable time frame.*” This guarantees that complaints and claims regarding the care received are addressed appropriately and promptly.

The Mental Health Law in La Rioja represents a comprehensive and forward-thinking approach to mental health care. By establishing a robust legal framework, promoting non-discrimination, ensuring community-based care, and focusing on prevention and early intervention, the law aims to significantly improve the mental health landscape in La Rioja. This legislation serves as a model for other regions, highlighting the importance of a holistic and inclusive approach to mental health care.

In addition to these efforts, Spain has also made significant strides in promoting disability rights through a **constitutional amendment to article 49**. Article 49 still used a medical approach, mentioning “*handicapped*” instead of **persons with disabilities**. The amendment also added that “*public administrations will pursue policies that guarantee the complete autonomy and social inclusion of people with disabilities.*” This amendment reflects Spain's commitment to ensuring that all citizens, regardless of their abilities, have access to necessary services and protections. This should not be taken lightly as this is only the third time in the country's history, parliament voted to make an amendment. There is reluctance to change the Constitution as it marked the return to democracy after the dictatorship of General Francisco Franco that lasted from 1939 to 1975. The two prior amendments were made in 1992, allowing citizens of other European Union member states to run as candidates in municipal elections and the second, in 2011, was to meet EU rules on public deficits amid the eurozone's debt crisis. (Felix, 2024).

Lastly, it is worth mentioning that there exists a **General Mental Health Law Proposal** in Spain that aims to address long-standing deficiencies in the mental health care system that persist since the psychiatric reform of the 1980s.

Despite its well-intentioned provisions, the law has faced significant criticism. Critics argue that a specific mental health law might inadvertently reinforce stigma by implying that mental health patients require different treatment from other patients. This could counteract efforts for integration within the general health system, as established by existing laws like the General Health Law of 1986 and the Cohesion and Quality Law of 2003.

Moreover, there are notable omissions in the proposal. Critics from the psychiatric community point out that the law fails to adequately address severe mental disorders such as schizophrenia, bipolar disorder, autism, and dementia. Instead, it focuses more on psychosocial issues and everyday distress, potentially conflating these with serious mental health conditions.

Another significant criticism is the law's focus on social determinants of mental health, such as unemployment, gender inequality, and social disintegration. While these factors are important, critics argue that the law overlooks the biological aspects of mental disorders, which require a balanced biopsychosocial approach. (Tirant lo Blanch España, 2022).

Some key provisions of this stagnate initiative are: (a) The law introduces a gender perspective in mental health services, ensuring that women, children, adolescents, and individuals with disabilities receive tailored care. Specific chapters outline the rights and needs of these groups, including those affected by the COVID-19 crisis. (b) To ensure timely access to mental health services is a significant focus. The law sets maximum waiting times and mandates minimum ratios of mental health professionals (18 psychiatrists, 18 clinical psychologists, and 23 specialized mental health nurses per 100,000 inhabitants). (c) The proposed law mandates public campaigns to reduce the stigma associated with mental illness and includes comprehensive strategies for suicide prevention, emphasizing the need for proper training and the establishment of preventive measures. (d) Emphasizing voluntary admissions and the regulation of mechanical and chemical restraints, the law aims to minimize coercive measures and ensure patient safety. (e) provisions for creating a State Center for Mental Health, a Mental Health Participation Council, and an Ombudsman for individuals with mental health issues aim to enhance governance and advocacy.

The General Mental Health Law Proposal in Spain is a commendable effort to bring mental health into the political and legislative agenda, aiming to improve the mental health care system and protect patient rights. However, it faces substantial criticisms regarding its potential to reinforce stigma, its inadequate focus on severe mental disorders, and its emphasis on social over biological factors. As the proposal moves forward, it will be crucial to address these concerns to ensure a balanced, effective, and inclusive approach to mental health care.

To sum up this section on the constitutional and national legal framework, the Spanish Constitution of 1978, particularly Article 43, recognizes the right to health protection as a guiding principle of social and economic policy. This mandates the State to ensure comprehensive health protection, extending logically to mental health. Spain has enacted various regulations, such as the General Health Act of 1986 and Law 16/2003, to integrate mental health into the broader healthcare system. The Mental Health Strategy of the National Health System 2022-2026 aims to enhance mental health services through improved prevention, care, and social integration. Furthermore, La Rioja's pioneering Mental Health Law (Ley 6/2023) provides comprehensive treatment and legal protections for individuals with mental health issues. Recent constitutional amendments also promote disability rights, reflecting Spain's commitment to

inclusive health care. Despite these advancements, legal initiatives such as the General Mental Health Law Proposal faces strong criticism for potentially reinforcing stigma and not adequately addressing severe mental disorders.

Overall, Spain's evolving legal framework underscores a commitment to improving mental health care and ensuring equitable access for all citizens.

III. 2. International legal framework

We need to consider two levels while examining the international legal framework for the right to health and hence the right to mental healthcare: the European Union level and the international level. Why? Unlike the instruments and legal texts of other organizations and international bodies, the regulations of the European Union can have direct application in the Spanish legal system. Although it is important to mention **articles 10. 2 and 96 of the Spanish Constitution** that state that fundamental rights and freedoms in the SC shall be interpreted in accordance with the UDHR and the international instruments and proclaim the validity of concluded international treaties. Once officially published in Spain, they shall form part of the internal legal order. In other words, the Spanish Constitution establishes the inclusion of international treaties ratified by the State in the national legal framework. Spain is part of several international treaties where mental health is explicitly mentioned, reflecting a strong baseline to addressing mental health issues within a human rights framework.

III. 2. 1. European Union framework

Spain is a member state of the European Union. The European Union is based on the rule of law. This means that every action taken by the EU is founded on treaties that have been approved democratically by its members. Every action taken by the EU is founded on the treaties. These binding agreements between EU member countries set out EU objectives, rules for EU institutions, how decisions are made and the relationship between the EU and its members. Treaties are the starting point for EU law and are known in the EU as primary law. Primary law encompasses Founding Treaties and general (unwritten) principles of law. General principles of EU law are cognizable through the case law of the CJUE. It is possible to think of them as an

unwritten part of the Founding Treaties, or as something existing in parallel, but this is, for the purposes of their practical effects and meaning irrelevant. The body of law that comes from the principles and objectives of the treaties is known as secondary law; and includes regulations, directives, decisions, recommendations and opinions. (*Types of EU Law - European Commission*, n. d.).

How do the norms from the EU and the domestic laws compatibilize? This harmonization comes through the **principle of the primacy** (also referred to as ‘precedence’ or ‘supremacy’) of EU law. This principle is based on the idea that where a conflict arises between an aspect of EU law and an aspect of law in an EU Member State (national law), EU law will prevail.

In *Costa v ENEL* ([Case 6/64](#)), the Court further built on the principle of direct effect and captured the idea that the aims of the treaties would be undermined if EU law could be made subordinate to national law. (*Primacy of EU law (precedence, supremacy) - EUR-Lex*, n. d.). As Spain transferred certain powers to the EU, it limited its sovereign rights, and thus in order for EU norms to be effective they must take precedence over any provision of the national law, including the Constitution.

In this regard, part of the EU’s primary Law is the **Charter of Fundamental Right of the European Union** which in its **article 35 guarantees the right to health care** “*Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities*”, thus recognizing it as a fundamental right within the EU context.

Historically, the Court of Justice of the European Union has brought up articles from the Convention for the Protection of Human Rights and Fundamental Freedoms when it comes to cases that involve human rights violations. However, in the context of health rights, looking at its jurisprudence, we see an increased use of articles from the European Charter of Fundamental rights, effect of the willingness to consider human rights implications in EU litigation. For instance, the EU CFR’s ‘right to health care’ was cited by the CJEU only once before 2009 –and that only in an AG Opinion– but has been cited five times since then. (*Rights: health rights as human rights (Chapter 7) - European Union Health Law*, n. d.).

Other relevant instruments from the EU on mental health are: The European Parliament resolution of 14 February 2017 on promoting gender equality in the field of mental health and clinical research [2016/2096 (INI)]. This resolution, among other things, calls on the commission and member states to follow up the EU orientation for action on mental health and well-being with an ambitious new strategy on mental health, promoting a holistic psychosocial whole-of-society approach, including a key gender pillar and ensuring policy coherence on mental health. The Report by the European Commission on community-based mental health services: “Providing community based mental health services: position paper”. The report specifies that *“the last fifty years have seen one of the most important international social movements of all time: the closure of large institutions and the development of community-based services for people with mental health problems. One of the main drivers has been the shift in society’s attitude towards people with mental disorders, away from exclusion and marginalization towards inclusion and participation”* which concordates with a network governance approach and the perspective of former Special Rapporteur Dr. Danius Pūras. Topics this research will delve into in III. 4. Analysis of the current legal framework.

III. 2. 2. International framework

In addition to this, there are several international instruments that foresee the right to health protection, some of them even explicitly foresee the right to mental healthcare.

Various United Nations instruments and resolutions have underscored the importance of mental health rights. The Universal Declaration of Human Rights (UDHR), although non-enforceable, sets international standards and is supported by the ICESCR, which Spain ratified in 1977. Article 25 of the UDHR asserts that everyone has the right to a standard of living adequate for health and well-being, which includes medical care. Article 12 of the ICESCR further recognizes the right of everyone to the highest attainable standard of physical and mental health and outlines the obligations of States to achieve this right through necessary steps.

The CRPD and its Optional Protocol, which Spain has been a party to since 2007, emphasizes the right of persons with disabilities to attain the highest standard of health without discrimination. Article 25 of the CRPD mandates state parties to provide health services needed

by persons with disabilities specifically because of their disabilities, including mental health services. This convention represents a paradigm shift from a biomedical to a human rights-based approach to disability policies, recognizing disabled people as rights-holders rather than objects of treatment and social protection.

Several reports and observations from UN committees further elaborate on these rights. The Concluding Observations of the Committee on the Rights of Persons with Disabilities in 2011 and 2019 on Spain's periodic reports, as well as the General Comment on Article 12 of the CRPD regarding equal recognition before the law, highlight the need for legal frameworks that preserve free and informed consent and protect against ill-treatment. Reports from the Special Rapporteur on torture and other cruel, inhuman, or degrading treatment or punishment (February 2013) and on the right to health (June 2017) emphasize the necessity of policies that respect autonomy, self-determination, and human dignity, and call for a shift from the biomedical model to a psychosocial one. Disabled people are now fully considered rights-holders not mere objects of treatment and social protection.

The Council of Europe also contributes to the international framework for mental health rights. The ECHR and the European Social Charter, to which Spain is a signatory, include provisions for the right to health protection. Article 11 of the European Social Charter obligates parties to ensure effective access to health care services, including for mental health. Although the ECHR has shortcomings in fully protecting mental health rights³, it sets important standards. The Oviedo Convention on the protection of human rights in the application of biology and medicine, along with recommendations from the Committee of Ministers (CM/Rec (2004)10 and CM/Rec (2009)), reinforces the principles of non-discrimination, preservation of civil and political rights, and minimal restriction for persons with mental disorders.

In conclusion, the presentation of the aforementioned instruments and recommendations reflect an international consensus on the importance of mental health, which Spain is obligated to uphold within its healthcare system and align with international standards. They call for significant changes in national policies to ensure accessible, quality mental health services,

³ Particularly the section on the right to liberty and security of person which noted the exception of "persons of unsound mind, alcoholics or drug addicts or vagrants" from the general safeguards has become a focus point.

reduce stigma, and protect the human rights and dignity of people with mental disorders. This comprehensive international framework underlines the pressing need for Spain to address mental health care deficiencies and adopt a human rights-based approach to mental health services.

III. 3. World Health Organization guidelines

The World Health Organization (WHO) has played a pivotal role in shaping global health policies, including those addressing mental health. The WHO Regional Committee approved the European Mental Health Action Plan 2013- 2020 at its 63rd Assembly in September of 2013. The **Comprehensive Mental Health Action Plan 2013- 2030** underscores the necessity of integrating mental health into universal health coverage, promoting human rights, and ensuring access to mental health services without discrimination. This plan aims to empower individuals with mental health problems and their care-takers or family members, addressing both individual and systemic issues through education, service provision, and professional training.

The WHO's action plan advocates for the following objectives proposing actions for the Member States classified by the objective that they contribute to:

Proposed actions for Objective 1, the strengthening effective leadership and governance for mental health:

“(35) Policy and law. Develop, strengthen, keep up to date and implement national policies, strategies, programmes, laws and regulations relating to mental health within all relevant sectors, including codes of practice and mechanisms to monitor protection of human rights and implementation of legislation, in line with evidence, best practice, the Convention on the Rights of Persons with Disabilities and other international and regional human rights instruments.” This action is crucial for addressing the gaps in Spain's legal framework for mental health, as identified in Chapter I.

“(36) Resource planning.” Allocate budgets commensurate with the resources required to implement evidence-based mental health plans. Adequate funding is essential to support AI-powered solutions and other innovative approaches proposed in this thesis.

“(37) Stakeholder collaboration. Motivate and engage stakeholders from all relevant sectors, including persons with mental disorders, carers and family members, in the development and implementation of policies, laws and services relating to mental health, through a formalized

structure and/or mechanism.” This collaborative approach ensures that the voices of those affected by mental health issues are heard, fostering more inclusive and effective solutions, which is very aligned with the idea of a networking responsibility.

Proposed actions for Objective 2, providing comprehensive, integrated and responsive mental health and social care services in community-based settings:

“(56) Service reorganization and expanded coverage. Systematically shift the locus of care away from long-stay mental hospitals towards non-specialized health settings with increasing coverage of evidence-based interventions (including the use of stepped care principles, as appropriate) for priority conditions and using a network of linked community-based mental health services, including short-stay inpatient care, and outpatient care in general hospitals, primary care, comprehensive mental health centres, day care centres, support of people with mental disorders living with their families, and supported housing.” This reorganization supports the integration of AI tools to enhance accessibility and efficiency in mental health care, as proposed in Chapter IV.

Proposed actions for Objective 3, the implementation of strategies for promotion and prevention in mental health:

“(73) Mental health promotion and prevention. Lead and coordinate a multisectoral strategy that combines universal and targeted interventions for promoting mental health and preventing mental disorders; for reducing stigmatization, discrimination and human rights violations; and which is responsive to specific vulnerable groups across the lifespan and integrated within the national mental health and health promotion strategies.” Despite efforts, stigma and discrimination against individuals with mental health issues persist. The proposed educational AI tools in Chapter IV aim to tackle this problem by raising awareness and promoting mental health literacy from a young age.

Proposed actions for Objective 4, the strengthening of information systems, evidence and research for mental health:

“(85) Information systems. Integrate mental health into the routine health information system and identify, collate, routinely report and use core mental health data disaggregated by sex and age (including data on completed and attempted suicides) in order to improve mental health

service delivery, promotion and prevention strategies and to provide data for the Global Mental Health Observatory (as a part of WHO's Global Health Observatory)." The integration of mental health into routine health information systems is critical for improving service delivery, promotion, and prevention strategies. This thesis advocates for the use of AI-powered tools that can seamlessly integrate mental health data into broader health information systems. AI can help in the accurate and efficient collection, analysis, and reporting of mental health data, thereby facilitating better decision-making and policy formulation.

The use of AI in mental health care can enhance service delivery by providing accurate diagnoses, personalized treatment plans, and continuous monitoring. AI-powered educational tools can promote mental health literacy and early intervention, while predictive analytics can help in the prevention of mental health crises. By integrating these technologies into the health information system, Spain can improve the overall effectiveness of its mental health services.

Contributing data to the Global Mental Health Observatory (as part of WHO's Global Health Observatory) is crucial for global mental health surveillance and research. The AI solutions proposed in this thesis can facilitate the collection of comprehensive and high-quality mental health data. This data can be used to track progress, identify gaps, and share best practices at an international level, thereby contributing to global efforts in mental health improvement.

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The Spanish Ministry of Health played a significant role in the development of the WHO's comprehensive Mental Health Action Plan, highlighting Spain's commitment to improving mental health care. The plan, approved by the 66th World Health Assembly in 2013 and extended to 2030, aligns with the **2030 Agenda for Sustainable Development**, emphasizing the global importance of mental health.

The vision of the 2030 Agenda is of “...a world with equitable and universal access to quality education at all levels, to health care and social protection, where physical, mental and social wellbeing are assured.”

Under the Goal 3 –ensure healthy lives and promote wellbeing for all at all ages–, target 3.4 is to “reduce by one third premature mortality from non-communicable diseases through prevention and treatment and promote mental health and wellbeing”, and target 3.5 is to “strengthen the prevention and treatment of substance abuse, including narcotic drug abuse and harmful use of alcohol”.

Furthermore, Goals 4, 8, 10, and 11 include specific references to inclusion of people with disabilities, essential for protection and promotion of the rights of people with mental, intellectual, and psychosocial disabilities who have been among the most ostracized.

The WHO's ongoing commitment to mental health through these comprehensive action plans in alignment with the **2030 Agenda for Sustainable Development**, aims to address the challenges facing the mental well-being of populations worldwide, advocating for systematic and coherent actions to improve mental health care. The proposed integration of AI-powered tools aligns with the WHO's vision by offering innovative solutions to extend the reach and effectiveness of mental health services.

III. 4. Analysis of the current legal framework

The Legal Framework applied to Spain including international applicable treaties and international standards is complex and unreliable to ensure the right to mental healthcare. Localizing guarantees for the right to health protection is complicated and the funding currently provided to improve the NHS is very low compared to other European countries. (Amnesty International, 2023). Finding provisions on mental healthcare is already tricky, and it is almost impossible to find guarantees for it. The legal framework as it is at the moment, can be navigated to find provisions on the importance of mental health. There are strong indicators such as the Mental Health Strategy of the NHS 2022-26, that effective mental healthcare is a goal, but without the proper regulations, guarantees and funding, it is simply in Plato's cavern, an idea.

Taking the SC as a starting point there are several provisions that can be brought up to argue for a right to mental healthcare. For instance, Article 14 guarantees equality before the law without “discrimination based on birth, race, sex, religion, opinion, or any other personal or social condition or circumstance shall prevail”. The current system, which forces individuals without financial means to rely on inadequate public services or forego treatment altogether, violates this principle of equality. By not ensuring access to healthcare services for the whole of the population, the constitutional mandate of non-discrimination and health protection is violated.

Mental health, as described by the W.H.O., is a state of well-being in which the individual realizes his or her own abilities, can cope with the normal stresses of life, can work productively and fruitfully, and is able to make a contribution to his or her community. A **mental disorder** as understood by the W.H.O. is used to denote a range of mental and behavioral disorders that fall within the International Statistical Classification of Diseases and Related Health Problems, Tenth revision (ICD-10). These include disorders that cause a high burden of disease such as depression, bipolar affective disorder, schizophrenia, anxiety disorders, dementia, substance use disorders, intellectual disabilities, and developmental and behavioral disorders with onset usually occurring in childhood and adolescence, including autism. (WHO Plan Action 2030).

It is clear that mental health is crucial for the development of the human being. Article 10 states the principle of dignity and the free development of personality as a foundation of political order and social peace. Mental health is integral to human dignity and a crucial aspect of the development of each human being’s personality, making it essential for the state to provide adequate mental healthcare services as part of the foundation of its order and social peace. As stated by magistrate María Luisa Balaguer Callejón: from the principle of dignity can derive negative obligations for the State, such as limits to euthanasia, and positive obligations, of assistance or provision-nature. “(..) *it is not only about decriminalizing abortion or assisted suicide by removing repressive control. It is also about ensuring that those who make such decisions can rely on the assistance of the public service that guarantees healthcare provisions, so that this choice can be realized under conditions of safety, health, respect for physical integrity, respect for the moral integrity of individuals, and the exclusion of any form of degrading treatment.*” (Concurrent opinion in the Judgement 19/2023, from the 22nd of March

on Euthanasia). The ethical imperative to recognize mental healthcare as a fundamental right is clearly grounded in the principle of human dignity. Mental health is intrinsically linked to an individual's ability to lead a fulfilling life, participate in society, and exercise their rights. The failure to adequately address mental health needs perpetuates inequality and undermines the dignity of those affected.

In addition to that, Article 9. 2 tasks public authorities with removing obstacles that prevent the full realization of individual and collective rights. By not providing adequate mental healthcare, Spain leaves significant barriers to the full realization of individuals' rights as the right to mental healthcare should be. The State is failing to promote the general welfare. Article 40 also agrees with the opinion of magistrate Balaguer Callejón by directing public authorities to promote favorable conditions for social and economic progress and a more equitable distribution of income. Access to mental healthcare is a critical component of social well-being. Ensuring equitable access to mental healthcare can contribute to a healthier, more productive population, fulfilling the state's mandate to promote social and economic progress and removing social inequalities.

Secondly, no less significant is the fact that among the jurisprudence on the Official Spanish Constitutional Court's webpage⁴ only **one** judgment appears when looking for the words "*right to mental health and psychological evaluation*". That is **Judgment 19/2023, from the 22nd of March** where magistrate Balaguer Callejón offered the aforementioned concurrent opinion.

The case involves a constitutional challenge against Organic Law 3/2021, which regulates euthanasia in Spain. The challenge was brought by fifty members of the Vox parliamentary group, led by Santiago Abascal Conde, who argued that the law violated several constitutional principles. The plaintiffs argued that the law undermined the absolute right to life, that the law's criteria for establishing "*informed consent*" were too vague and that the provisions for the registration of healthcare professionals as conscientious objection could lead to discrimination and stigmatization. The Court ultimately upheld the constitutionality of Organic Law 3/2021 or LORE, dismissing all claims brought by the plaintiffs. The ruling emphasized the

⁴ <https://hj.tribunalconstitucional.es/es/Resolucion/List>

importance of balancing the right to life with personal autonomy and the need for stringent safeguards to protect vulnerable individuals.

One of the arguments from the plaintiffs on the strict fundamental sense of the right to life was that the legislator had vaguely described “severe, chronic and disabling suffering” –article 5. 1. d) LORE– . As one of the two situations that allow access to euthanasia, the plaintiffs considered that the term ‘suffering’ (‘padecimiento’ in Spanish) was too imprecise, too open, suggesting the use of a word like ‘disease’. What is interesting to this research is that the term suffering, as understood by the Court in the legal basis, must always be presented as a somatic ailment or disease in its origin. The second aspect is the constant and intolerability of the suffering, which could be of a psychic nature. The Court sustains the distinction between the pathology or physical ailment “without the possibility of cure or appreciable improvement” or “incurable” –sections b) and c), respectively, of art. 3–, on the one hand, and the associated physical or psychic suffering, on the other, fundamentally exclude the LORE from intending or allowing to include among such ‘sufferings’ the ‘psychological illness’ or even ‘depression’.

In this regard, magistrate Balaguer Callejón affirms that by embracing the constitutional notion of the principle of dignity and not just using it in an instrumental way, “*it protects both the person who decides to end their life voluntarily and autonomously, essentially due to having reached a point of physical and/or psychological deterioration that makes their existence inhumane for them. But it also protects those other individuals who, due to the circumstances of the person wishing to die, need the help of another person in their process towards a dignified death.*” This means that psychological deterioration, the suffering of the mind could ultimately be considered as a reason to the assisted ending of one’s life. The Court states that there are sufficient interpretative tools to prevent the creation of legal uncertainty in the application of the law. The law stipulates that the occurrence of the situation provided for in its Article 3 (b) must be verified, in any case, by at least two different and independent physicians, in addition to an administrative collegiate body composed of professionals in medicine and law (the commission of guarantee and evaluation). They are procedural safeguards that help compensate for any margins of indeterminacy that the law might present when applied to specific cases. However, in no way negates the possibility of claiming a mental disorder as a circumstance for accessing this

new right to euthanasia. As somatic ailment or disease could be related to a mental health disorder.

While depression is one of the conditions increasing in number in the aftermath of the COVID-19 pandemic, it is easy to wonder whether this disorder could be a trigger to invoke the right to euthanasia. Zoraya ter Berek, a 29 year old woman suffering from severe depression, autism and borderline personality disorder died in May of 2024 after receiving the approval for euthanasia in the Netherlands (*Muere a los 29 años la joven neerlandesa que solicitó la eutanasia por depresión crónica*, 2024). This case initiated an intense debate on the possibility of something similar happening in Spain. (*¿Puede darse en España un caso de eutanasia como el de la joven holandesa con depresión?*, 2024). Spanish jurists seem to have a majoritarian consensus. As depression has been cured in the past, it does not comply with the requirements of article 3 of the LORE.

In the mentioned Judgement 19/2023 the Court clearly supports this “new” fundamental right to the self-determination of our own death in euthanasia contexts (or right to euthanasia) which then correlates to a new positive obligation from the State to contribute to its effectiveness –as explained by magistrate Enrique Arnaldo Alcubilla within the Judgment– . This new right to euthanasia derives directly from the right to life, but it is not even hinted in the constitutional text. This leads this thesis to strongly embrace the possibility of this happening with the right to mental healthcare and the right to health protection by analogy.

Thirdly, as Spain transferred certain powers to the EU, limiting its sovereign rights, EU norms such as the CFR take precedence over any provision of the national law, including the Constitution. Article 35 of the CFR guarantees the right to health care, recognizing it as a fundamental right within the EU context. Therefore, de facto, the integration of international obligations into Spanish domestic law means that, in practice, the right to health protection, as recognized by the EU, should be treated as a fundamental right, thus giving the right to healthcare the consideration of a fundamental right in Spain.

In 2017, through the adoption of the European Pillar of Social Rights (EPSR) the EU and its Member States committed to ensuring that everyone has a “right to timely access to affordable, preventive and curative health care of good quality”. Moreover, and during the pandemic European Commission President Ursula von der Leyen stated in March 2020 that “we

will stop at nothing to save lives”, referring to the Commission's commitment to protecting European citizens from cross-border health threats and strengthening its role in European health.

However, as pointed out by Dr. Claire Lougarre from Ulster University in 2023, article 35 of the CFR does not sufficiently allow the CJEU to promote a right to health across the EU. It conditions individuals' rights to access health to “*national laws and practices*”, in line with the EU principle of conferral and the EU's limited competences in the field of health. Some authors, like Heidi Suorsa and Catharine Barnard even consider article 35 to represent a principle rather than a justiciable right in the CJEU's case-law.

In the CJEU case-law there are only three cases, one of which is a judgment Case C-372/04 –the other two are opinions– that appear when looking for the words “*right to mental health care*” within the “*Public Health*” subject matter. This demonstrates the pressing need for guarantees for the right to mental health care at both national and EU level. The CJEU as well as the Constitutional Court's support could be key to recognizing the right to mental healthcare as a human right at the international level and a fundamental right at the domestic level –respectively.

Fourthly, “*there is no health without mental health*”, this quote was originally said by Brock Chisholm, a world-renowned psychiatrist, the first general director of the WHO in 1954 (Kolappa et al., 2013). This statement is even backed up by scientific articles like “*Many mental-health conditions have bodily triggers*” (The Economist, 2024) which explores the intricate connections between physical health and mental health. It starts with the story of Jessica Huitson, a 12 year old girl who was misdiagnosed with anxiety from “*spending too much time watching TikTok videos*” whilst actually what she had was a condition known as PANDAS, Pediatric Autoimmune-Neuropsychiatric Disorders Associated with Streptococcus.

In this regard, the Report of the (now, former) Special Rapporteur Dr. Dainius Pūras on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health is especially interesting as it focuses on moving away from the traditional, biomedical model of mental health care to a more holistic, human rights-based approach. The biomedical model, which focuses on neurobiological aspects and processes, has dominated mental health services for years. This approach has been criticized for contributing to the exclusion, neglect, coercion, and abuse of individuals with mental health conditions. It has also led to over-medicalization and the use of psychotropic medications as first-line treatments, often

without sufficient evidence of their long-term efficacy and safety. The report advocates for a balanced, biopsychosocial model of care that integrates biological, psychological, and social factors. This model emphasizes the importance of community-based services, deinstitutionalization, and the promotion of social inclusion.

A great exemplification of this paradigm shift is the ECHR. As previously shared, article 5. 1. (e) addresses the human rights implications of detaining individuals classified as “*persons of unsound mind, alcoholic or drug addicts or vagrants*”. This outdated language was influenced by eugenic principles prevalent in the mid-20th century, particularly in the UK, Denmark, and Sweden. (Hjelmar, 2023). Language, that has not been modified and that leads to continued discrimination and involuntary detainment based on mental health conditions. Although, this issue goes beyond language. It reflects the idea that certain individuals were biologically inferior and should be controlled or excluded from society, influenced by laws and practices that led to continued discrimination and involuntary detainment based on mental health conditions. The discrepancy between the ECHR and the international human rights standards reflected in the CRPD calls for a reform, a shift towards a human rights-based (or biopsychosocial) approach to mental health.

From an ethical standpoint, it is unjust to differentiate between physical and mental health in terms of access and quality of care. Mental health conditions often lead to severe impairments and suffering, comparable to or exceeding those caused by physical ailments. Therefore, the recognition of mental healthcare as a fundamental right is not only a legal necessity but also a moral obligation.

The COVID-19 pandemic has significantly impacted global mental health, exacerbating existing issues and creating new ones. In response to these challenges, it is imperative to adopt robust frameworks to protect vulnerable populations. The “Responsibility to Protect” (R2P), a principle from International Humanitarian Law (IHL), provides a compelling framework for ensuring the protection and promotion of mental health in the post-pandemic era. This principle, traditionally used to prevent mass atrocities such as genocide, war crimes, ethnic cleansing, and crimes against humanity, can be adapted to address the mental health crisis, ensuring that states fulfill their obligations to protect the mental well-being of their populations. R2P is built on three pillars: the responsibility of the state to protect its populations from genocide, war crimes, ethnic

cleansing, and crimes against humanity; the responsibility of the international community to assist states in fulfilling this duty; and the responsibility of the international community to intervene when a state is manifestly failing to protect its population.

The first pillar of R2P emphasizes that states have a primary responsibility to protect their populations. This principle can be extended to mental health care, particularly in the wake of the pandemic. The COVID-19 crisis has led to a surge in mental health issues, including anxiety, depression, and PTSD. States must recognize that mental health is integral to overall health and well-being and should be prioritized in national health strategies. The obligation to protect mental health aligns with international human rights instruments, such as the International Covenant on Economic, Social and Cultural Rights (ICESCR), which Spain ratified in 1977. Article 12 of the ICESCR recognizes the right to the highest attainable standard of physical and mental health. By applying R2P, states are reminded of their duty to take proactive measures to prevent and address mental health issues, ensuring access to necessary services and support.

The second pillar of R2P focuses on international assistance and capacity-building. The global nature of the pandemic's impact on mental health necessitates a coordinated international response. Countries with advanced mental health care systems can provide technical assistance, share best practices, and support capacity-building initiatives in nations with less developed systems. International organizations, including the WHO, can play a crucial role in facilitating this cooperation. They can offer guidance, resources, and frameworks for countries to develop and implement effective mental health strategies. The pandemic has highlighted the interconnectedness of nations; hence, fostering international solidarity and cooperation is essential for addressing global mental health challenges.

The third pillar of R2P involves international intervention when a state is unwilling or unable to protect its population. In the context of mental health, this does not imply military intervention but rather a range of diplomatic, humanitarian, and economic measures to ensure that populations receive necessary care and support. The international community, through mechanisms such as the United Nations and regional organizations like the European Union, can exert pressure on states to prioritize mental health. This can include advocating for policy changes, providing funding for mental health programs, and supporting non-governmental organizations that deliver mental health services. When states neglect their duty to protect mental

health, international intervention becomes a moral imperative to safeguard human rights and dignity.

Lastly, a comparative analysis with other jurisdictions that have advanced mental health legislation can offer valuable insights. For example, the Mental Health Act of 1983 in the United Kingdom and subsequent amendments provide a comprehensive legal framework for the treatment and care of individuals with mental health conditions. The Act ensures safeguards for patients' rights and promotes the provision of necessary mental health services. In the United States, the Mental Health Parity and Addiction Equity Act of 2008 requires that insurance coverage for mental health services be no less favorable than that for medical and surgical benefits. This legislation underscores the principle that mental health care is as vital as physical health care. In both cases, legislative frameworks have evolved to recognize and address the unique needs of individuals with mental health conditions, offering a model for Spain to consider in its legislative reforms.

III. 5. Recommendations for legal and policy changes

To transform mental healthcare from a luxury to a basic human right, hence to a fundamental right in the Spanish domestic legal framework, this thesis deems essential to (1) ensure that the right to mental health is explicitly recognized and established by the jurisprudence of the Constitutional Court, mirroring the legal recognition given to the right to euthanasia. (2) Through targeted amendments and inclusion of guarantees and sanctions for non-compliance to existing laws such as Law 14/1986 of 25 April 1986 on General Health, specifically Chapter III, Law 16/2003, of 28 May for the cohesion and quality of the NHS and the Royal Decree 1030/2006, of 15 September, that establishes the portfolio of common services of the National Health System. (3) The development of new legislation dedicated to mental health rights like La Rioja's pioneering Mental Health Law (Ley 6/2023) that guarantees to ensure effective rights in the mental healthcare field. Such legal guarantees will solidify mental health as an integral component of the right to health protection, ensuring it is treated with the same importance as physical health.

At the EU level, it would be necessary to (4) amend the CFR to explicitly recognize the right to mental healthcare as a universal human right, aligned with international human rights

standards, such as the WHO guidelines and the Goal 3 of the 2030 Agenda for Sustainable Development. This amendment could be initiated by first being supported by the case-law of the CJEU. By doing so, mental health will gain the necessary legal standing to be addressed comprehensively and effectively across the EU.

As Dr. Dainius very-well stated “*As mental health emerges as a policy priority, it is crucial now to assess the failure to chart a better way forward, reaching consensus on how to invest and how not to invest.*” (Report, 2017). (5) It cannot be stressed enough how adequate funding is pivotal to ensuring the effectiveness of mental health services. Therefore, a higher percentage of the national healthcare budget should be allocated to mental health services. This increased funding should ensure sufficient resources for prevention, diagnosis, and treatment. Specific laws, such as the General Health Law could be amended to mandate minimum spending thresholds for mental health or rather the Government could approve a Royal Decree given the urgency of the need for mental healthcare. Such financial commitments are essential to providing comprehensive care and addressing the growing mental health needs of the population.

In accordance with the network governance approach and the aforementioned paradigm shift: (6) Shifting from institutional care to community-based mental health services is another crucial recommendation. This approach promotes integration into primary healthcare and enhances accessibility for individuals in need. Amendments to the Public Health Act (Ley de Salud Pública) and the General Health Law can support this transition by prioritizing community-based interventions and services. By embedding mental health services within the community, we can ensure that care is both accessible and tailored to the needs of individuals in their everyday environments. (7) Engaging with international bodies and other countries to share best practices and develop robust mental health policies and frameworks is essential. This can involve participation in international agreements, such as the Convention on the Rights of Persons with Disabilities (CRPD), and the implementation of recommendations from the United Nations Human Rights Council. Through international collaboration, Spain can enhance its mental health policies by learning from global experiences and integrating successful strategies. (8) Integrate technology into the NHC. Utilizing AI and other technological advancements could be highly beneficial to support mental health education, diagnosis, and treatment, making these services more accessible and efficient.

Finally, (9) comprehensive legal reforms are necessary to integrate international standards into national law. This means aligning domestic legislation with the ECHR and ensuring compliance with the standards set by the CRPD and other international agreements. Creating a coherent framework will uphold the rights of individuals with mental health conditions and ensure their full participation in society.

By implementing these policy changes and legal reforms, Spain can ensure that mental healthcare is recognized as a fundamental human right, accessible to all citizens. This transformation will not only improve the lives of individuals with mental health conditions but also create a more inclusive, equitable, and supportive society.

III. 6. Interim conclusion

This Chapter underscores the critical need for reform in Spain's approach to mental health care within its legal framework. While Article 43 of the 1978 SC mandates public authorities to protect health, classifying it as a guiding principle rather than a fundamental right leads to inconsistent prioritization and enforcement. The General Health Act 14/1986 and Royal Decree 1030/2006 outline services predominantly for severe mental disorders, neglecting non-severe conditions and creating significant gaps in care.

International instruments such as the ICESCR, and the CRPD, demand a more inclusive and rights-based approach to mental health care which could be argued to be enforced by the R2P. These instruments call for non-discrimination, accessibility, and comprehensive care, principles that are echoed in the WHO guidelines and the 2030 Agenda for Sustainable Development.

The current legal framework's inadequacies, including the EU legal framework, result in social inequalities, as the underfunded public system forces many to seek private mental health services, which are often financially inaccessible. This reliance exacerbates disparities, undermining the principles of equality and justice. To address these issues, this thesis proposes several pathways to elevate mental health care to a fundamental right: amending existing laws to explicitly recognize the right to mental health care, ensuring adequate funding, integrating

AI-powered solutions for better accessibility and efficiency, and aligning national laws with international human rights standards.

In conclusion, there is an urgent need for legal reforms to recognize mental health care as a fundamental right in Spain. Addressing these gaps will foster a more inclusive, equitable, and effective mental health care system, especially crucial for Generation Z in the post-pandemic era.

CHAPTER IV: The possibilities AI offers in the mental health field

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The ongoing challenges within Spain's mental healthcare system underscore the urgent need for transformative solutions. Despite various healthcare policies, significant gaps remain, particularly in addressing non-severe mental health conditions. The COVID-19 pandemic has exacerbated these issues, especially affecting Generation Z, and has highlighted the need for a comprehensive and inclusive approach to mental health.

One of the most promising developments in recent years is the advent of advanced AI technologies. Although AI has been around since the 1950s (SITNFlash, 2017), it wasn't until the launch of ChatGPT and similar models that the true potential of AI began to capture public attention (*What was AI before ChatGPT?* | *LinkedIn*, 2024). These AI systems offer capabilities never seen before, including natural language processing, real-time data analysis, and personalized interaction, which can revolutionize the way people get in touch with mental healthcare services.

This Chapter presents a set of proposed solutions aimed at bridging the gaps in Spain's mental healthcare system. By leveraging the unprecedented possibilities offered by AI, combined with legal reforms, community-based approaches, and collaborative efforts among stakeholders, these solutions strive to enhance accessibility, ensure equitable treatment, and recognize mental healthcare as a better guaranteed fundamental human right.

IV. 1. Integration of AI-powered solutions: opportunities, benefits and challenges

The Age of Big Data, an age in which we have the capacity to collect huge sums of information too cumbersome for a person to process. AI is the umbrella term for systems designed by humans that display rational behavior by analyzing their environment through the collection and interpretation of data and reasoning and processing of information derived from this data, subsequently deciding on the best action to achieve a given goal, and acting accordingly⁵. The application of AI in this regard has already been quite fruitful in several industries such as technology, banking, marketing, entertainment⁶, legal, why not mental healthcare?

For instance, within the legal sector AI is being used in various ways depending on how the system behind the AI works:

- legal information retrieval systems, exemplified by “ROSS Intelligence”;
- expert legal systems, represented by “DoNotPay”;
- automatic generation systems for legal documents, using web applications like “LegalZoom”;
- automatic reading and analysis systems for contracts;
- predictive analysis systems, such as “Lex Machina” and;
- online dispute resolution systems, like “Modria.”

Not to mention that AI-powered mechanisms are already being used for one of the faces of healthcare: physical health. Running trackers and medication devices are omnipresent (Hannah van Kolfschooten, 2022). The number of people using mobile apps to monitor their own fitness, lifestyle, or general health to take control over their health outside of a clinical setting⁷ is increasing daily, as is the number of these types of apps. This means that the possibilities of the use of AI into the Mental Healthcare field, as they did at the beginning for the legal field, will surpass expectations. It is necessary and almost imperative to study initial ideas and **visualize improvement**.

⁵ Independent High Level Expert Group on Artificial Intelligence, A Definition of AI: Main Capabilities and Disciplines, 2019

⁶ *ibid* <https://sitn.hms.harvard.edu/flash/2017/history-artificial-intelligence/>

⁷ Incisive Health International, Taking the Pulse of eHealth in the EU: An Analysis of Public Attitudes to eHealth Issues in Austria, Bulgaria, Estonia, France, Germany, Italy, and the UK (2017)

IV. 1. 1. Proposed solution n. 1: Educational tools on Mental Health

Mental Health Care involves both promotion and prevention. Educational tools are key components of these strategies, playing a crucial role in increasing awareness and understanding of mental health issues. It is very well known among new generations that Emotional Intelligence is equally important as Intellectual Intelligence. Being emotionally intelligent allows the human being to be self-aware. It is only once an individual is conscious of what is happening within their mind that they can determine whether to seek professional help or practice mindfulness or other alternatives.

The integration of Artificial Intelligence (AI) in education presents transformative opportunities to enhance mental health literacy, awareness, and support among the general public, including students. By leveraging AI technologies, we can provide personalized and accessible mental health education, promoting early intervention and reducing stigma. This section explores the various opportunities AI offers in educational settings and beyond, concrete examples of AI applications, the benefits these technologies bring, and the expected challenges.

What are some of the opportunities offered by AI in Education? AI technologies offer several innovative opportunities to improve mental health education. (a) Personalized and interactive learning as AI can tailor educational content to individual needs, ensuring that each person receives relevant and engaging information about mental health. AI-powered platforms can create interactive and immersive learning experiences, making mental health education more engaging and effective. (b) AI can provide instant feedback and support, helping users understand and manage their mental health better. (c) AI can analyze large volumes of data to identify trends and patterns in mental health, informing targeted interventions and support.

Several AI applications demonstrate the potential of AI in mental health education:

Among chatbots and virtual assistants, “*Supportive Friend GPT*” can engage with users in real-time, and offer emotional support and mental health information. It engages users in conversations, offers coping strategies, and can guide individuals to relevant resources or professionals if needed. The AI chatbot “*Woebot*” offers cognitive behavioral therapy (CBT) techniques to help users manage their mental health. Woebot is an AI-driven chatbot that utilizes cognitive behavioral therapy (CBT) techniques to help users manage their mental health. Woebot

engages users through conversations, offering tools and exercises to address issues such as anxiety, depression, and stress. It also tracks mood patterns and provides personalized feedback. Woebot's accessibility through apps makes it a valuable resource for mental health support. Chatbots and virtual assistants present numerous **benefits**:

- **Accessibility:**
 - Available 24/7, making mental health support accessible anytime.
 - Easily accessible to everyone via websites or apps, making mental health resources.
- **Personalization:** Provides tailored advice based on user interactions.
- **Stigma reduction:** Offers a private way to seek help, reducing the stigma associated with mental health issues.

AI-powered interactive learning platforms like “*Coursera*” use machine learning algorithms to personalize the learning experience. Coursera offers online courses from universities and organizations worldwide. AI in Coursera personalizes the learning path for users by recommending courses, articles, and videos. Mental health modules can be integrated into the platform, providing comprehensive education on mental health topics tailored to the user's learning style and needs. Platforms like this can be adapted to include mental health modules, providing users with tailored content based on their preferences and progress. For instance, AI can recommend specific articles, videos, or exercises on mental health topics relevant to individual needs, just like “*Flo Health*” does for educational purposes on menstrual cycles for women⁸. Some of the **benefits** Interactive Learning Platforms can offer on mental health education are:

⁸ Flo Health instead of simply combining data from a user's most recent cycles, uses machine learning to make its cycle length predictions based on the information a user previously logged, including her age, the days of her periods, symptoms, and more. Additionally, Flo has just completed the MVP of a symptom predictions feature and is also now investigating possibilities to use ML for ovulation and fertile window predictions.

Flo interacts with the user through notifications and an AI chatbot with option-based answers. In this way, smart algorithms help pair users with personalized, relevant information. Hence, Flo is able to offer a plethora of personalized multimedia content including video courses, articles, stories and more, that users can implement to educate and better understand themselves. The content is reviewed by over 80 renowned health and wellbeing experts to ensure that all of the information is evidence-based and trustworthy.

- Personalized Learning: Tailors content to individual needs, improving engagement and retention.
- Scalability: Can reach a large audience, making mental health education widely accessible.
- Interactive Content: Engages users with videos, quizzes, and interactive exercises.

AI can enhance VR and AR technologies to create immersive educational experiences about mental health. For example, VR programs like “*Oxford VR*” offer exposure therapy for conditions like anxiety, social phobia, depression among other mental health conditions. These programs use immersive simulations to expose users to anxiety-inducing situations in a controlled environment, helping them develop coping strategies. By simulating real-life scenarios, it is also possible to reduce stigma through experiential learning. The VR experiences are guided by AI, providing personalized feedback and adjusting scenarios based on the user's progress. This use of technology and AI presents the following **benefits**:

- Immersive Learning: Offers experiential learning, helping users practice coping strategies in realistic scenarios.
- Personalization: Adapts to the user's progress, providing tailored support.
- Engagement: Highly engaging, increasing user motivation and retention of mental health techniques.

This thesis presents two pathways to visualize a better future with AI integrated:

First, to incorporate Psychology into the mandatory academic curriculum in Middle and High School. By adding to the academic mandatory curriculum a class on Psychology schools can help future generations become more self-aware and develop emotional intelligence. They will at least have the necessary vocabulary to understand themselves better.

Second, to develop AI Chatbots for every school. Creating an institutional app for adolescents (ages 10 - 18) that would allow them to express their feelings and daily experiences. This AI listener, designed like a chatroom app, would provide judgment-free feedback with kindness and an enriching vocabulary, fostering a supportive and understanding environment for youngsters.

It would be designed like a chatroom app, where you could also call to have spoken conversations with the AI listener. It could detect not just early stages of any mental disorder but also social issues in the classroom or school such as bullying, eating disorders, or inappropriate behavior. By offering detailed feedback, the app would help students identify and understand their emotions, reminding them that they can always seek help. This proactive approach could make students feel heard, safe, and empowered, promoting greater self-awareness and emotional intelligence.

Additionally, the app would be connected to school psychologists and pedagogues, ensuring that any serious issues identified by the AI are addressed by professionals. Requiring parental consent would enhance the support system and maintain transparency, while ensuring the privacy and safety of the students. This AI Chatbot would be an additional resource for students to talk.

To sum up, AI technology offers transformative opportunities to enhance mental health education for the general public and students alike, providing personalized, accessible, and engaging learning experiences. By leveraging AI technologies, educational institutions and public platforms can promote early intervention, reduce stigma, and improve mental health outcomes. The proposed AI chatbot for schools exemplifies how technology can empower students by helping them identify and manage their emotions, while also providing a valuable connection to professional support systems. However, the successful integration of AI requires careful consideration of privacy, ethical, and practical challenges. By addressing these challenges and drawing insights from recent reports and regulatory frameworks, we can harness the potential of AI to create a supportive and inclusive environment for mental health education. This approach not only enhances the educational landscape but also contributes to the overall well-being and emotional resilience of future generations.

IV. 1. 2. Proposed solution n. 2: diagnosis and treatment

The integration of AI in diagnosis and treatment of mental health disorders presents a transformative opportunity. AI could help enhance the efficiency, accuracy, and accessibility of mental healthcare services. By leveraging AI tools, doctors will have assistance in providing more precise diagnoses (this thesis proposes: pre-diagnose alternatives). Personalized treatment

plans, and continuous monitoring could be possible improving overall patient outcomes. This subsection explores the various opportunities AI offers in the realms of diagnosis and treatment, concrete examples of AI applications, the benefits these technologies bring, and the expected challenges.

Several AI apps demonstrate the potential of AI in the diagnosis and treatment of mental health conditions:

AI-based diagnostic tools like *IBM Watson Health* can analyze medical records, research papers, and clinical data to assist healthcare providers in diagnosing mental health conditions. Identifying patterns and correlations in data that may be overlooked by human clinicians, IBM Watson Health enhances diagnostic accuracy and speed.

AI-driven therapy platforms like *Woebot* use AI to deliver cognitive behavioral therapy (CBT) and other therapeutic techniques through chatbots. These AI-driven platforms provide users with exercises, coping strategies, and continuous support, making therapy more accessible and convenient. Woebot employs sentiment analysis to analyze user text input. If a user consistently expresses sadness, hopelessness, or despair in their chat interactions, Woebot recognizes these patterns and offers guidance or recommends professional help (Olawade et al., 2024).

There is a study that examined the impact of an 8-week digital mental health intervention using Woebot on stress, burnout, and resilience in a sample of 256 adults (Durden et. al., 2023). The results showed that exposure to Woebot-LIFE –the intervention– was associated with significant reductions in perceived stress and burnout, as well as increased resilience over the study period. Participants with clinically elevated mood symptoms at baseline experienced greater reductions in stress compared to those without, though both groups showed significant improvements. Factors like race, insurance type, and baseline resilience were associated with changes in the outcomes. The findings suggest that conversational agent-guided mental health interventions like Woebot-LIFE may be beneficial for reducing stress and burnout and increasing resilience in both clinical and non-clinical populations. As promising as this sounds, it is necessary to note that this study was “*funded by Woebot Health.*” This research aims to explore the possibilities of AI technology, not to defend only the benefits. Another study on the effects of

the Woebot on the psychological distress levels of South African university students⁹ concluded that Woebot intervention had a reduction on the psychological distress of university students (Gernandt, 2022).

On predictive analytics AI-powered tools like “Mindstrong Health” use AI to analyze smartphone usage patterns and detect changes in mental health. This company uses digital biomarkers collected through smartphone interactions to monitor and assess mental health. By analyzing data such as typing speed, keyboard interactions, and screen activity, Mindstrong's AI technology can detect early signs of mental health issues like anxiety and depression but also schizophrenia, bipolar disorder, PTSD and substance abuse. Mindstrong believes this “digital phenotyping” approach could lead to earlier detection of mental health issues compared to traditional methods. The app provides a daily graph showing measures of cognition and emotion to the user and their clinician. If the data suggests a patient is at risk of relapsing, the clinician can reach out to the patient through the app (*The smartphone app that can tell you're depressed before you know it yourself* | *MIT Technology Review*, 2023). These assessments therefore, can provide early detection and intervention for those at risk. These assessments can be conducted discreetly, ensuring users' privacy while identifying those who may need additional support.

Some of the clear benefits Mindstrong Health offers are identifying mental health issues before they become severe, continuous monitoring as it provides ongoing assessments, offering real-time insights into mental health. Mindstrong Health represents a significant advancement in the field of mental health care, leveraging AI to provide early detection and personalized support for mental health issues.

However, some studies (Cosgrove et al., 2020) caution against embracing mental health apps uncritically as they pose significant risks during the COVID-19 pandemic due to the principles of “surveillance capitalism”. It is no secret that these apps collect behavioral data that is then used to predict and shape human behavior. The study concludes emphasizing the need for a more rights-based approach to digital mental health technologies, which this thesis completely agrees with.

⁹ https://repository.up.ac.za/bitstream/handle/2263/89691/Gernandt_Effect_2022?sequence=3

AI can assist in personalized medication management by analyzing patient data to predict how individuals will respond to different medications. The impact of personalized treatment plans on therapy efficacy could be significant. Traditionally, mental health treatments have followed a one-size-fits-all approach, sometimes leading to suboptimal outcomes. AI-driven personalization enables therapists to design interventions that align precisely with an individual's specific challenges and strengths¹⁰. The integration of AI in treatment plans can help healthcare providers choose the most effective medication with the fewest side effects, improving treatment outcomes. An example of this perspective is Pear Therapeutics' *reSET*, an U.S. Food and Drug Administration-approved prescription digital therapeutic, that tracks patient engagement and progress, enabling data-driven treatment adjustments (Prime Therapeutics, 2021).

Digital mental health apps like *Willow* is an AI-powered app designed to support mental health by providing users with personalized therapy plans, daily mental health check-ins, and progress tracking. Willow's mission is to help people in crisis build better lives. They work within the existing behavioral health ecosystem to engage patients in crisis where they are seeking help today. This app uses AI to offer evidence-based techniques like CBT, CAMS (Collaborative Assessment and Management of Suicidality) and mindfulness, tailored to the user's specific needs. Willow monitors mood patterns and provides insights to both users and their therapists. It can be described as a telehealth service, facilitating a collaborative approach to mental health care and 24/7 support.

AI apps in mental healthcare can analyze vast amounts of data to identify patterns and markers that may be indicative of specific mental health conditions, leading to more accurate diagnoses. They can also tailor treatment plans to individual patients based on their unique data, including genetic, behavioral, and psychological factors. AI can provide ongoing monitoring of patients' mental health, offering real-time insights and timely interventions. Last but not least, AI helps optimize the allocation of healthcare resources by identifying patients who need immediate attention versus those who can be managed with lower-intensity interventions.

¹⁰ P. Gual-Montolio, I. Ja' en, V. Martínez-Borba, D. Castilla, C. Suso-Ribera, Using Artificial intelligence to enhance ongoing psychological interventions for emotional problems in real- or close to real-time: a systematic review, *Int. J. Environ. Res. Public Health* 19 (13) (2022) 7737, <https://doi.org/10.3390/ijerph19137737>.

H. Siala, Y. Wang, SHIFTing artificial intelligence to be responsible in healthcare: a systematic review, *Soc. Sci. Med.* 296 (2022) 114782, <https://doi.org/10.1016/j.socscimed.2022.114782>.

One of the objectives of this research is to propose a model for integrating AI tools that can enhance mental health education, preventative care and diagnosis (Objective 3). By presenting the aforementioned different uses of AI in the mental healthcare sector in diagnosis and treatment, this thesis aims for Spain to project into the immediate future and start allocating resources into the developing of one of these uses at the ACs levels. By reforming the legal framework to guarantee the right to mental health and investing in this AI driven possibilities, the current clogged bottleneck waiting list with appointments for patients 482 days away¹¹ could be alleviated. Moreover, following this proposal, Spain could be contributing to the development of more emotionally intelligent generations, and overall a better society.

Despite its potential, the integration of AI in the diagnosis and treatment of mental health conditions presents several challenges. The most threatening of all would be privacy and data security concerns as the companies behind the mental health AI-powered apps are constantly collecting and analyzing sensitive mental health data. In this regard, it is crucial to ensure that AI tools comply with data protection regulations and that patient data is handled with the utmost confidentiality. PhD Deimant Rimkutė, Junior Research Fellow Institute of Law of Lithuanian Social Science Centre in Lithuania tackles the concerns on the liability issues around the use of AI in medical diagnosis and treatment –assistive-diagnostic AI– by proposing assistive-diagnostic AI to be deemed a product. This way, the assessment of its quality “should be conducted through a state of the art test” (Rimkutė, 2023). Deimantė points out that although tort law will continue to serve as a mechanism for providing redress to patients impacted by incidents involving assistive-diagnostic AI, new challenges are expected.

In the EU context, relevant norms are the proposal on Artificial Intelligence Liability Directive (AILD) and the revised Product Liability Directive (PLD) by analogy to Deimantė’s proposal, the practice of designing mental healthcare apps under the standards of these Directives could open a way forward of implementing AI in the mental healthcare sector ethically and safely. Ethically, issues such as informed consent, transparency, and the potential for bias in AI algorithms need to be carefully managed. As Mental Health Europe concludes “*Avoiding the exacerbation of socio-economic inequalities via digital tools is a paramount requirement for the ethically aligned deployment of these technologies.*”. (Report MHE, 2023). Safely, translates

¹¹ Initial image.

into (a) addressing biases in AI algorithms that can reflect and perpetuate biases present in the data they are trained on and (b) ensuring accountability then safety and quality are not provided (Report, 2023). Ensuring that AI tools are designed and tested to be fair and equitable is essential to prevent unequal treatment and support.

Another significant challenge associated with the integration of AI in digital mental healthcare –or telehealth– services is the potential decline in the quality of healthcare. Similar to how the quality of education declined during online classes in the COVID-19 quarantine, telehealth services can suffer from limitations that impact the effectiveness of patient care. These limitations include the lack of physical examinations, difficulties in building a personal rapport between healthcare providers and patients, and the challenges in accurately assessing non-verbal cues. These factors can lead to a diminished quality of diagnosis and treatment, potentially affecting patient outcomes and satisfaction. That is why quality standards need to be developed for digital mental health apps, chatbots and counseling and for AI-algorithms that flag who might need which support. The EU and national governments should stimulate the development of these standards and regulate their implementation. (Report MHE, 2023).

This thesis recommends the following course of action:

One practical application of AI in the Spanish context is integrating AI diagnostic and treatment tools with existing healthcare apps like “Salud Responde” in the AC Andalusia. This app, connected to the National Healthcare System, allows users to make appointments with family doctors, nurses, or administrative staff. Integrating AI with "Salud Responde" could provide continuous support and monitor patient progress, enhancing the app's functionality and offering personalized mental health care .

For example, an AI chatbot integrated into “Salud Responde” could engage with users, offering feedback on their experiences and identifying potential mental health issues. This chatbot could provide a preliminary diagnosis and propose treatment options, which would then be reviewed by a healthcare professional. This approach ensures that the final diagnosis and treatment plan are made by a qualified doctor, enhancing the accuracy and reliability of the care provided.

Finally, it is crucial to note that the effectiveness of AI tools depends on patients' access to the technology. Most of the aforementioned mental health AI applications require a monthly or annual fee¹² that can not be affordable to everyone. Individuals in low-income, once again (Chapter I), may face challenges in accessing the necessary services. Moreover, those who live in remote areas may face challenges in accessing internet connectivity for AI-based diagnosis and treatment.

To sum up, AI offers transformative opportunities to enhance the diagnosis and treatment of mental health conditions, providing precision, personalization, and continuous care. However, the successful integration of AI in mental health care requires careful consideration of privacy, ethical, practical challenges and most importantly, access to these technologies. By addressing these challenges and drawing insights from recent reports and regulatory frameworks, we can harness the potential of AI to create a more effective, accessible, and equitable mental health care system. This approach not only enhances clinical outcomes but also contributes to the overall well-being and quality of life for individuals with mental health conditions.

IV. 2. The current legal framework for AI-powered solutions on MH

The integration of AI into mental health care brings forth the necessity of navigating a complex legal landscape to ensure that such technologies are implemented ethically and effectively. This section explores the current legal framework governing AI-powered solutions for mental health, focusing on relevant EU regulations and providing recommendations for enhancing the Spanish legal framework.

In **Spain**, the legal framework for AI in healthcare is primarily guided by general health laws and specific regulations on digital health and AI. However, there is a **noticeable lack** of normatives addressing AI applications in mental health. Gap that is being covered on an international level. The European Union has been proactive in establishing a comprehensive regulatory framework for AI technologies, including applications in healthcare. The most prominent regulations impacting AI in healthcare are the General Data Protection Regulation (GDPR) and the proposed Artificial Intelligence Act.

¹² <https://www.statnews.com/2023/02/06/mindstrong-demise-future-mental-health-care/>

The **GDPR** is a cornerstone of data protection in the EU, ensuring that personal data is handled with the utmost care. For AI applications in mental health, compliance with GDPR is crucial to protect patient privacy and data security. AI systems must be designed to adhere to principles such as data minimization, purpose limitation, and transparency.

The **proposed AI Act** by the European Commission aims to create a harmonized legal framework for AI across the EU. This regulation categorizes AI systems based on their risk levels, with stringent requirements for high-risk applications, including those in healthcare. The AI Act emphasizes transparency, accountability, and human oversight, ensuring that AI systems do not compromise fundamental rights.

The Council of Europe is developing the “**Convention on Artificial Intelligence, Human Rights, Democracy and the Rule of Law**”, which aims to protect human rights against the harms of AI. This legally binding instrument will apply to the entire lifecycle of AI systems, promoting a human rights-based approach to AI governance. The Convention will require AI systems to undergo human rights assessments, ensuring non-discrimination, privacy, and data protection.

The **Oxford Handbook on AI Ethics** identifies four pillars to human rights by design: 1. Design and deliberation – the systems should be designed in ways that are compatible with human rights, and should include public consultations to properly identify any human rights risks and mitigation strategies. 2. Assessment, testing and evaluation – technologies should be assessed, tested and evaluated, in an ongoing manner, against human rights principles and obligations. 3. Independent oversight, investigations and sanctions – there should be robust regulatory oversight agencies which can conduct investigations and impose sanctions for potential or actual breaches of human rights arising from technologies. 4. Traceability, evidence and proof – systems must be designed to ensure auditability by independent oversight agencies, such as by preparing, maintaining and securely storing design documentation, testing and evaluation reports.

Taking these into consideration and to facilitate the integration of AI-powered solutions in mental health care, Spain should consider the following recommendations. First, develop specific regulations for AI in Healthcare. Creating detailed guidelines that address the use of AI

in mental health care, would ensure compliance with GDPR, PLD, AI Act and ethical standards for AI development and use in healthcare, focusing on transparency, accountability, fairness and protection of patients' rights and users' rights. Secondly, Spain needs to invest in digital literacy programs to ensure that both healthcare providers and patients can effectively use AI-powered tools. Lastly, Spain should address the digital divide, making sure that AI-powered mental health solutions are accessible to all populations, including those in remote and low-income areas.

To sum up, the integration of AI-powered solutions in mental health care presents both significant opportunities and challenges within the existing legal framework. While the European Union is establishing promising regulations such as the GDPR and the proposed AI Act to ensure the ethical and secure use of AI technologies, Spain's legal framework still requires enhancements to address the specific needs of AI applications in mental health. By adopting comprehensive regulations that align with EU directives, promoting ethical AI development, enhancing data security, supporting digital literacy, and addressing the digital divide, Spain can effectively leverage AI to improve mental health care.

These measures will ensure that AI technologies are implemented responsibly, safeguarding patient rights and enhancing the overall accessibility of mental health services of good quality for its citizens.

IV. 3. Interim conclusion

The integration of AI in the diagnosis and treatment of mental health disorders presents significant opportunities to enhance the efficiency, accuracy and accessibility of mental healthcare services. By leveraging AI tools, doctors can receive assistance in providing more precise diagnoses and personalized treatment plans tailored to each patient's unique needs and circumstances.

AI-powered diagnostic tools like IBM Watson Health can analyze vast amounts of medical data to identify patterns and correlations that may be overlooked by human clinicians, leading to faster and more accurate diagnoses. AI therapy platforms such as Woebot use natural language processing and sentiment analysis to deliver evidence-based treatments like CBT through conversational chatbots. This makes therapy more accessible and convenient for

patients, while still providing continuous support and monitoring. Tools like Mindstrong Health take this a step further by using AI to analyze smartphone usage patterns and detect early warning signs of mental health issues before they become severe. By continuously monitoring digital biomarkers like typing speed and screen activity, these apps can provide real-time insights to both patients and their clinicians, enabling timely interventions.

The personalization enabled by AI has the potential to significantly improve treatment outcomes compared to traditional one-size-fits-all approaches.

However, the integration of AI in mental healthcare also presents challenges that must be carefully managed. Privacy and data security are paramount concerns, as these apps collect sensitive mental health data that must be protected. Ethical issues like informed consent, transparency, and algorithmic bias also need to be addressed to ensure AI tools are deployed equitably. There are also risks of AI exacerbating socioeconomic inequalities if access is limited to those who can afford the necessary technology and connectivity. Quality standards and regulations will be critical to maintain the effectiveness and safety of AI-powered mental healthcare.

In summary, while AI offers immense potential to transform mental healthcare for the better, its integration must be done thoughtfully and with appropriate safeguards in place. By addressing the challenges proactively, AI can be leveraged to provide more personalized, accessible and effective mental health support to those in need.

CONCLUSIONS AND RECOMMENDATIONS

The exploration of Spain's mental health care system throughout this thesis has revealed significant deficiencies and opportunities for transformation. Each chapter has contributed crucial insights into understanding the current state of mental health care and the necessary steps for improvement.

(1) The historical evolution and analysis of Spain's mental health legislation highlight a system primarily designed to address severe mental disorders, which does not address without extreme delays and that also neglects non-severe conditions. The COVID-19 pandemic exacerbated these deficiencies, exposing a discriminatory gap in accessibility to mental healthcare services. The lockdowns and social isolation measures have particularly affected Gen Z. For Spaniards without sufficient resources, the cost of private treatment is prohibitive, effectively creating a **two-tiered system where the wealthy can access the care they need while the less affluent are left to struggle**. This form of discrimination underscores the urgent need for systemic reforms to ensure equitable access to mental health services for all, regardless of their economic background.

(2) Stigma has been a barrier to accessing mental health care due to mental health being a taboo topic and older generations having little mental health literacy. **Generation Z in Spain is playing a pivotal role in challenging these stigmas, using social media and public advocacy to promote mental health awareness and support**. Legal reforms must focus on public education initiatives and anti-stigma campaigns, supported by legislative measures like the Mental Health Law, to foster a more inclusive and supportive environment.

(3) Theory and practice, reality tends to disappoint. The legal analysis revealed that Spain's Constitution mandates on article 43 the protection of health, yet this provision is categorized as a guiding principle rather than a directly enforceable right. Hence mental healthcare is even more remotely foreseen. **The current legal framework, including national laws and international obligations, provides a basis for enhancing mental health care, but significant gaps remain**. These gaps result in social inequalities, forcing many to rely on private services that are not accessible to all. While international agreements such as the ICESCR, and CRPD call for a more inclusive approach, emphasizing non-discrimination and comprehensive

care, others like ECHR and CFR are doubted to lead to change. The incoherence leads to inconsistent prioritization and enforcement of the right to physical health and mental health.

(4) The integration of AI technology in the mental health care field presents a transformative opportunity. AI-powered tools can enhance education, diagnosis, and treatment, providing the opportunity to cultivate more emotionally intelligent future generations. AI tools can also make mental health services in Spain more accessible and efficient by unclogging the bottleneck entrance to them. However, this requires ensuring that AI technologies are implemented effectively and responsibly: addressing privacy and data security concerns, managing ethical issues like informed consent and transparency, and mitigating the risks of algorithmic bias. Furthermore, it is crucial to **develop quality standards for digital mental health apps, which could be done by starting good practices that consist of following the requirements of the PDL and the AILD.**

(5) By integrating AI diagnostic and treatment tools with existing healthcare apps in the NHS, such as “Salud Responde” in Andalusia, Spain, we can bridge the discriminatory gap in accessing mental healthcare services as these would be provided for free by the NHS. This integration also would provide continuous support and monitor patient progress, offering personalized mental health care. Additionally, ensuring that AI tools are accessible and affordable to all, regardless of socioeconomic status, is paramount to achieving equitable mental healthcare. The proposed model for integrating AI tools aims to enhance mental health education, and diagnosis, thereby contributing to the development of more emotionally intelligent generations and a better society.

(6) To transform mental healthcare into a fundamental right within the Spanish legal framework, several key measures are essential. First, the **right to mental health should be explicitly recognized by the Constitutional Court, akin to the legal status of euthanasia.** Second, existing laws, such as the **General Health Law, should be amended** to include specific guarantees and sanctions for non-compliance, ensuring robust mental health protections. Additionally, **new legislation dedicated to mental health, like La Rioja's Mental Health Law,** should be developed to guarantee effective rights in this field. At the EU level, **amending the Charter of Fundamental Rights (CFR) to explicitly recognize the right to mental healthcare as a universal human right.** Furthermore, the R2P principle, traditionally used to prevent mass

atrocities, can be adapted to the mental health crisis exacerbated by the COVID-19 pandemic. **R2P emphasizes the state's duty to protect its population, including mental health**, and necessitates international assistance and intervention when states fail to do so. By applying R2P to mental health, Spain and the international community can ensure proactive measures to prevent and address mental health issues, ensuring access to necessary services and support.

(7) **Adequate funding** is crucial, with a higher percentage of the national healthcare budget allocated to mental health services to ensure sufficient resources for prevention, diagnosis, and treatment. The shift from institutional to community-based mental health services should be prioritized, promoting integration into primary healthcare and enhancing accessibility. This can be supported by amending relevant laws to prioritize community-based interventions. International collaboration is vital, engaging with global bodies and countries to share best practices and develop robust mental health policies.

Spain has the power to transform its mental health care system, ensuring it becomes a fundamental right accessible to all citizens. This transformation will not only improve the well-being of Generation Z but also create a more inclusive, equitable, and supportive society for all.

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La Barandilla de 9 a 21h horario peninsular 🇪🇸 911385385 Telf Esperanza 717 003 717
SE PUEDE SALIR. Pide ayuda profesional, cuenta tu caso, denunciemos públicamente las fallas en el sistema de #saludmental, tiremos el estigma entre todos. También tienes recursos y puedes donar en: [i https://stopsuicidios.org](https://stopsuicidios.org) #ayuda #mente #psicologia #viral #mentalhealth #saludmental #sanidad #viral #parati». (2024, July 10). Instagram. <https://www.instagram.com/p/C9QQREhub3J/>

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ANNEX

The qualitative semi-structured Interviews with the following scheme of questions:

1. What motivated you to focus on this intersection of AI and medical liability? Many MH conditions have bodily triggers, how can we raise awareness of this fact and convince people that the lack of mental healthcare can affect physical healthcare so that it is crucial to have effective MH services?
2. Cases of Gen Z (1997-2012) deeply affected by the pandemic, why so many cases of anxiety and depression.
3. Do you think the international framework is enough to enforce the right to mental healthcare? Does it make the right to mental healthcare effective in Lithuania? If not, why?
4. How can AI be implemented responsibly in mental health services to avoid issues of liability and ensure patient safety?
 - a. education- feedback
 - b. treatment and diagnosis - doctor having the last call
 - c. medical devices
5. What policy recommendations would you suggest to make it possible for legislators and policymakers to balance innovation with the need to protect patient rights and ensure safe AI deployment?

6. What future trends do you anticipate in AI and healthcare law, and how should researchers and policymakers prepare for these changes?

Interviewed:

Former UN Special Rapporteur and Dr. in Psychiatry Dainius Pūras

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