# Rights of the Persons with Mental Illness in Europe

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The protection of the rights of persons with mental disorders is in the focus of several international conventions resolutions and recommendations. The best known in this context are:

- Article 5 of the Europen Convention for the Protection of Human Rights and Fundamental Freedoms from 1950,
- The Recommendation R(83)2 "The legal protection of persons suffering from a mental disorder placed as involuntary patients" from 1983,
- The Parliamentary Assembly of the CE Recommendation no1235(1994) on psychiatry and human rights,
- The United Nation's General Assembly Resolution 46(119) Principles of the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care.

I will focus on the latest of them — the recommendation of the Committee of Ministers of the Council of Europe no(2004)10 of the Committee of Ministers of the Council of Europe — that tries to summarize several previous instruments and also suggests some control mechanisms to facilitate the implementation into practice of several articles.

Why do we need international law instruments to focus on the protection of the rights of persons with mental disorders? First of all, this group is considered to be more vulnerable than the rest of the population. They can more often find themselves in situations where they — due to the mental disorder — are not able to stand up for their rights and thus can be submitted to exploitation, humiliation or some other violation of their basic rights. That means, that apart from the rights that they enjoy together with the rest of other citizens or patients they also need special protection. Another side, and less frequently spoken about, is the need to protect the doctor — patient relationship. This is especially obvious in situations, where persons are placed in hospitals without their consent, be it in the context of emergency treatment or treatment on the court order, after criminal proceedings. In the past, before the states started to adopt modern mental health laws it was considered to be a normal practice that the doctors were responsible for admitting the mentally ill person to the hospital, administered the treatment (often against the persons will) and also decided, when the person could leave the hospital. Such a practice was comfortable for the society — all the responsibility was put on the shoulders of the psychiatrists. The doctors — from an ethical standpoint — accepted this responsibility. So the medical community accepted the burden of being responsible for both the treatment and the security issues, they accepted to be the providers of both medically and ethically balanced treatment as well as protection of the community. Such a state of affairs is however potentially hazardous because of the controversy of the two different roles. The

need to have a judicial mechanism of deprivation of liberty apply also in psychiatry has been obvious and that is where the international mechanisms try to direct the legislation of the states.

I would mainly like to focus on the medico-legal aspects of involuntary hospitalisation, as this areas is definitely the most problematic one from the point of view of protection of the rights of mentally ill persons.

I would start from the issue of placement to the psychiatric hospital/ward or any other mental institution. It is clear that involuntary hospitalisation should only apply when there are no other alternatives. First of all, every state should stream to have different options, mainly community-based services — for the treatment of mental problems. One of the basic issues of the protection of persons with mental disorders is the availability of different modes of services, so that hospital treatment will only be used as a last resort. There should also be an easy access to the services (i.e. not too long waiting lists) and the public should be educated not to stigmatize mental health problems to ease the psychological burden of making the contact with a specialist. Secondly, there should be a clear procedure of admittance to the hospital. Information concerning the house-rules, rights of patients (including the right to terminate the treatment and leave the hospital) should be provided to the patients — preferably in a written form — so that they will be in a position to give their full informed consent to the hospitalisation and treatment. In case the involuntary placement is initiated, it should follow the rules that ensure the necessary safeguards: the decision for placement should be taken by a court or another competent body and it should be based on medical assessment. The person in question has the right to be heard in this context and the decision must be subjected to a review after a specified period of time. It goes without saying that the person has the right to appeal against the decision and should be provided with all the necessary assistance (including legal assistance) to do that.

The doctor's role has to be clarified in the context of involuntary treatment. Placement in a psychiatric hospital should not automatically mean involuntary administration of medication. Here again, every competent person has the right to refuse medical interventions, including involuntary administration of medication. There should be legal provisions stipulating how the doctors should act in such a situation and how the decision for treatment against the will is carried out. Nevertheless, the treatment interventions should always aim at engaging the patient in a working doctor-patient relationship. The treatment should be based on a treatment plan and evolve different entities from pharmacotherapy to psychotherapeutic interventions.

In a psychiatric hospital resort to means of restraint may from time to time be necessary. Restraints — whether chemical or mechanical — must always be surrounded by appropriate safeguards. They can only be ordered by a doctor and the use of mechanical restraints should never be prolonged. The restrained patient must be under constant medical supervision. After the restraint episode the patient should be briefed to restore the doctor-patient relationship. It is always preferable to try to use non-physical means to control aggressive behaviour and the personal should receive appropriate treatment for that.

The patient's contacts with outside world should be maintained in all possible ways (visits, telephone contacts). Patients have a right to send and receive correspondence without censorship.

All institutions that may admit patients involuntarily should be subjected to outside inspections and monitoring. Such inspections should involve the assessment of the conditions and

treatment of the involuntarily admitted patients. Members carrying out such inspections should speak to the patients in private and receive confidential complaints and the visits can be both announced and unannounced. The monitoring results should be followed up on regular basis.

The potential vulnerability of persons with mental disorder means that an appropriate regulatory framework to guide mental health professionals in their practice is required. The law, independent monitoring bodies and the framework of professional standards will set the context within which mental health professionals work. However, they remain upholding the relevant ethical and legal standards in their individual contacts with persons with a mental disorder.