COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

Recommendation Rec(2004)10
of the Committee of Ministers to member states
concerning the protection of the human rights and dignity of persons with mental disorder

(Adopted by the Committee of Ministers on 22 September 2004
at the 896th meeting of the Ministers' Deputies)[1]

The Committee of Ministers, under the terms of Article 15.*b* of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members, in particular through harmonising laws on matters of common interest;

Having regard, in particular:

– to the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 and to its application by the organs established under that Convention;

– to the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine ("Convention on Human Rights and Biomedicine") of 4 April 1997;

– to Recommendation No. R (83)2 concerning the legal protection of persons suffering from mental disorder placed as involuntary patients;

– to Recommendation No. R (87)3 on the European Prison Rules;

– to Recommendation No. R (98)7 concerning the ethical and organisational aspects of health care in prison;

– to Recommendation 1235 (1994) of the Parliamentary Assembly of the Council of Europe on psychiatry and human rights;

Having regard to the work of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment;

Having regard to the public consultation on the protection of the human rights and dignity of persons suffering from mental disorder, initiated by the Steering Committee on Bioethics;

Considering that common action at European level will promote better protection of the human rights and dignity of persons with mental disorder, in particular those subject to involuntary placement or involuntary treatment;

Considering that both mental disorder and certain treatments for such disorder may affect the essence of a person's individuality;

Stressing the need for mental health professionals to be aware of such risks, to act within a regulatory framework and to regularly review their practice;

Stressing the need to ensure that persons with mental disorder are never emotionally, physically, financially or sexually exploited;

[1] In accordance with Article 10.2c of the Rules of Procedure of the meetings of the Ministers' Deputies, the Permanent Representative of the United Kingdom indicated that she reserved the right of her government to comply or not in certain limited respects with Articles 17, 18, 20, 24, 28 and 37 of the Recommendation.

Conscious of the responsibility of mental health professionals to guarantee, as far as they are able, the implementation of the principles enshrined in these guidelines;

Recommends that the governments of member states should adapt their laws and practice to the guidelines contained in this Recommendation;

Recommends that the governments of member states should review their allocation of resources to mental health services so that the provisions of these guidelines can be met.

GUIDELINES

Chapter I – Object and scope

Article 1 – Object

1. This Recommendation aims to enhance the protection of the dignity, human rights and fundamental freedoms of persons with mental disorder, in particular those who are subject to involuntary placement or involuntary treatment.

2. The provisions of this Recommendation do not limit or otherwise affect the possibility for a member state to grant persons with mental disorder a wider measure of protection than is stipulated in this Recommendation.

Article 2 – Scope and definitions

Scope

1. This Recommendation applies to persons with mental disorder defined in accordance with internationally accepted medical standards.

2. Lack of adaptation to the moral, social, political or other values of a society, of itself, should not be considered a mental disorder.

Definitions

3. For the purpose of this Recommendation, the term:

– “competent body” means an authority, or a person or body provided for by law which is distinct from the person or body proposing an involuntary measure, and that can make an independent decision;

– “court” includes reference to a court-like body or tribunal;

– “facility” encompasses facilities and units;

– “personal advocate” means a person helping to promote the interests of a person with mental disorder and who can provide moral support to that person in situations in which the person feels vulnerable;

– “representative” means a person provided for by law to represent the interests of, and take decisions on behalf of, a person who does not have the capacity to consent;

– “therapeutic purposes” includes prevention, diagnosis, control or cure of the disorder, and rehabilitation;

– “treatment” means an intervention (physical or psychological) on a person with mental disorder that, taking into account the person’s social dimension, has a therapeutic purpose in relation to that mental disorder. Treatment may include measures to improve the social dimension of a person’s life.

Chapter II – General provisions

Article 3 – Non-discrimination

1. Any form of discrimination on grounds of mental disorder should be prohibited.

2. Member states should take appropriate measures to eliminate discrimination on grounds of mental disorder.

Article 4 – Civil and political rights

1. Persons with mental disorder should be entitled to exercise all their civil and political rights.

2. Any restrictions to the exercise of those rights should be in conformity with the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms and should not be based on the mere fact that a person has a mental disorder.

Article 5 – Promotion of mental health

Member states should promote mental health by encouraging the development of programmes to improve the awareness of the public about the prevention, recognition and treatment of mental disorders.

Article 6 – Information and assistance on patients' rights

Persons treated or placed in relation to mental disorder should be individually informed of their rights as patients and have access to a competent person or body, independent of the mental health service, that can, if necessary, assist them to understand and exercise such rights.

Article 7 – Protection of vulnerable persons with mental disorders

1. Member states should ensure that there are mechanisms to protect vulnerable persons with mental disorders, in particular those who do not have the capacity to consent or who may not be able to resist infringements of their human rights.

2. The law should provide measures to protect, where appropriate, the economic interests of persons with mental disorder.

Article 8 – Principle of least restriction

Persons with mental disorder should have the right to be cared for in the least restrictive environment available and with the least restrictive or intrusive treatment available, taking into account their health needs and the need to protect the safety of others.

Article 9 – Environment and living conditions

1. Facilities designed for the placement of persons with mental disorder should provide each such person, taking into account his or her state of health and the need to protect the safety of others, with an environment and living conditions as close as possible to those of persons of similar age, gender and culture in the community. Vocational rehabilitation measures to promote the integration of those persons in the community should also be provided.

2. Facilities designed for the involuntary placement of persons with mental disorder should be registered with an appropriate authority.

Article 10 – Health service provision

Member states should, taking into account available resources, take measures:

i. to provide a range of services of appropriate quality to meet the mental health needs of persons with mental disorder, taking into account the differing needs of different groups of such persons, and to ensure equitable access to such services;
ii. to make alternatives to involuntary placement and to involuntary treatment as widely available as possible;
iii. to ensure sufficient provision of hospital facilities with appropriate levels of security and of community-based services to meet the health needs of persons with mental disorder involved with the criminal justice system;
iv. to ensure that the physical health care needs of persons with mental disorder are assessed and that they are provided with equitable access to services of appropriate quality to meet such needs.

Article 11 – Professional standards

1. Professional staff involved in mental health services should have appropriate qualifications and training to enable them to perform their role within the services according to professional obligations and standards.

2. In particular, staff should receive appropriate training on:

i. protecting the dignity, human rights and fundamental freedoms of persons with mental disorder;
ii. understanding, prevention and control of violence;
iii. measures to avoid the use of restraint or seclusion;
iv. the limited circumstances in which different methods of restraint or seclusion may be justified, taking into account the benefits and risks entailed, and the correct application of such measures.

Article 12 – General principles of treatment for mental disorder

1. Persons with mental disorder should receive treatment and care provided by adequately qualified staff and based on an appropriate individually prescribed treatment plan. Whenever possible the treatment plan should be prepared in consultation with the person concerned and his or her opinion should be taken into account. The plan should be regularly reviewed and, if necessary, revised.

2. Subject to the provisions of chapter III and Articles 28 and 34 below, treatment may only be provided to a person with mental disorder with his or her consent if he or she has the capacity to give such consent, or, when the person does not have the capacity to consent, with the authorisation of a representative, authority, person or body provided for by law.

3. When because of an emergency situation the appropriate consent or authorisation cannot be obtained, any treatment for mental disorder that is medically necessary to avoid serious harm to the health of the individual concerned or to protect the safety of others may be carried out immediately.

Article 13 – Confidentiality and record-keeping

1. All personal data relating to a person with mental disorder should be considered to be confidential. Such data may only be collected, processed and communicated according to the rules relating to professional confidentiality and personal data protection.

2. Clear and comprehensive medical and, where appropriate, administrative records should be maintained for all persons with mental disorder placed or treated for such a disorder. The conditions governing access to that information should be clearly specified by law.

Article 14 – Biomedical research

Biomedical research on a person with mental disorder should respect the provisions of this Recommendation and the relevant provisions of the Convention on Human Rights and Biomedicine, its additional Protocol on Biomedical Research and the other legal provisions ensuring the protection of persons in research contexts.

Article 15 – Dependants of a person with mental disorder

The needs of family members, in particular children, who are dependent on a person with mental disorder should be given appropriate consideration.

Chapter III – Involuntary placement in psychiatric facilities, and involuntary treatment, for mental disorder

Article 16 – Scope of chapter III

The provisions of this chapter apply to persons with mental disorder:

i. who have the capacity to consent and are refusing the placement or treatment concerned; or
ii. who do not have the capacity to consent and are objecting to the placement or treatment concerned.

Article 17 – Criteria for involuntary placement

1. A person may be subject to involuntary placement only if all the following conditions are met:

i. the person has a mental disorder;
ii. the person's condition represents a significant risk of serious harm to his or her health or to other persons;
iii. the placement includes a therapeutic purpose;
iv. no less restrictive means of providing appropriate care are available;
v. the opinion of the person concerned has been taken into consideration.

2. The law may provide that exceptionally a person may be subject to involuntary placement, in accordance with the provisions of this chapter, for the minimum period necessary in order to determine whether he or she has a mental disorder that represents a significant risk of serious harm to his or her health or to others if:

i. his or her behaviour is strongly suggestive of such a disorder;
ii. his or her condition appears to represent such a risk;
iii. there is no appropriate, less restrictive means of making this determination; and
iv. the opinion of the person concerned has been taken into consideration.

Article 18 – Criteria for involuntary treatment

A person may be subject to involuntary treatment only if all the following conditions are met:

i. the person has a mental disorder;
ii. the person's condition represents a significant risk of serious harm to his or her health or to other persons;
iii. no less intrusive means of providing appropriate care are available;
iv. the opinion of the person concerned has been taken into consideration.

Article 19 – Principles concerning involuntary treatment

1. Involuntary treatment should:

i. address specific clinical signs and symptoms;
ii. be proportionate to the person's state of health;

iii. form part of a written treatment plan;
iv. be documented;
v. where appropriate, aim to enable the use of treatment acceptable to the person as soon as possible.

2. In addition to the requirements of Article 12.1 above, the treatment plan should:

i. whenever possible be prepared in consultation with the person concerned and the person's personal advocate or representative, if any;
ii. be reviewed at appropriate intervals and, if necessary, revised, whenever possible in consultation with the person concerned and his or her personal advocate or representative, if any.

3. Member states should ensure that involuntary treatment only takes place in an appropriate environment.

Article 20 – Procedures for taking decisions on involuntary placement and/or involuntary treatment

Decision

1. The decision to subject a person to involuntary placement should be taken by a court or another competent body. The court or other competent body should:

i. take into account the opinion of the person concerned;
ii. act in accordance with procedures provided by law based on the principle that the person concerned should be seen and consulted.

2. The decision to subject a person to involuntary treatment should be taken by a court or another competent body. The court or other competent body should:

i. take into account the opinion of the person concerned;
ii. act in accordance with procedures provided by law based on the principle that the person concerned should be seen and consulted.

However, the law may provide that when a person is subject to involuntary placement the decision to subject that person to involuntary treatment may be taken by a doctor having the requisite competence and experience, after examination of the person concerned and taking into account his or her opinion.

3. Decisions to subject a person to involuntary placement or to involuntary treatment should be documented and state the maximum period beyond which, according to law, they should be formally reviewed. This is without prejudice to the person's rights to reviews and appeals, in accordance with the provisions of Article 25.

Procedures prior to the decision

4. Involuntary placement, involuntary treatment, or their extension should only take place on the basis of examination by a doctor having the requisite competence and experience, and in accordance with valid and reliable professional standards.

5. That doctor or the competent body should consult those close to the person concerned, unless the person objects, it is impractical to do so, or it is inappropriate for other reasons.

6. Any representative of the person should be informed and consulted.

Article 21 – Procedures for taking decisions on involuntary placement and/or involuntary treatment in emergency situations

1. Procedures for emergency situations should not be used to avoid applying the procedures set out in Article 20.

2. Under emergency procedures:

i. involuntary placement or involuntary treatment should only take place for a short period of time on the basis of a medical assessment appropriate to the measure concerned;
ii. paragraphs 5 and 6 of Article 20 should be complied with as far as possible;
iii. decisions to subject a person to involuntary placement or to involuntary treatment should be documented and state the maximum period beyond which, according to law, they should be formally reviewed. This is without prejudice to the person's rights to reviews and appeals, in accordance with the provisions of Article 25.

3. If the measure is to be continued beyond the emergency situation, a court or another competent body should take decisions on the relevant measure, in accordance with Article 20, as soon as possible.

Article 22 – Right to information

1. Persons subject to involuntary placement or involuntary treatment should be promptly informed, verbally and in writing, of their rights and of the remedies open to them.

2. They should be informed regularly and appropriately of the reasons for the decision and the criteria for its potential extension or termination.

3. The person's representative, if any, should also be given the information.

Article 23 – Right to communication and to visits of persons subject to involuntary placement

The right of persons with mental disorder subject to involuntary placement:

i. to communicate with their lawyers, representatives or any appropriate authority should not be restricted. Their right to communicate with their personal advocates or other persons should not be unreasonably restricted;
ii. to receive visits should not be unreasonably restricted, taking into account the need to protect vulnerable persons or minors placed in or visiting a psychiatric facility.

Article 24 – Termination of involuntary placement and/or involuntary treatment

1. Involuntary placement or involuntary treatment should be terminated if any of the criteria for the measure are no longer met.

2. The doctor in charge of the person's care should be responsible for assessing whether any of the relevant criteria are no longer met unless a court has reserved the assessment of the risk of serious harm to others to itself or to a specific body.

3. Unless termination of a measure is subject to judicial decision, the doctor, the responsible authority and the competent body should be able to take action on the basis of the above criteria in order to terminate that measure.

4. Member states should aim to minimise, wherever possible, the duration of involuntary placement by the provision of appropriate aftercare services.

Article 25 – Reviews and appeals concerning the lawfulness of involuntary placement and/or involuntary treatment

1. Member states should ensure that persons subject to involuntary placement or involuntary treatment can effectively exercise the right:

i. to appeal against a decision;
ii. to have the lawfulness of the measure, or its continuing application, reviewed by a court at reasonable intervals;
iii. to be heard in person or through a personal advocate or representative at such reviews or appeals.

2. If the person, or that person's personal advocate or representative, if any, does not request such review, the responsible authority should inform the court and ensure that the continuing lawfulness of the measure is reviewed at reasonable and regular intervals.

3. Member states should consider providing the person with a lawyer for all such proceedings before a court. Where the person cannot act for him or herself, the person should have the right to a lawyer and, according to national law, to free legal aid. The lawyer should have access to all the materials, and have the right to challenge the evidence, before the court.

4. If the person has a representative, the representative should have access to all the materials, and have the right to challenge the evidence, before the court.

5. The person concerned should have access to all the materials before the court subject to the protection of the confidentiality and safety of others according to national law. If the person has no representative, he or she should have access to assistance from a personal advocate in all procedures before a court.

6. The court should deliver its decision promptly. If it identifies any violations of the relevant national legislation it should send these to the relevant body.

7. A procedure to appeal the court's decision should be provided.

Chapter IV – Placement of persons not able to consent in the absence of objection

Article 26 – Placement of persons not able to consent in the absence of objection

Member states should ensure that appropriate provisions exist to protect a person with mental disorder who does not have the capacity to consent and who is considered in need of placement and does not object to the placement.

Chapter V – Specific situations

Article 27 – Seclusion and restraint

1. Seclusion or restraint should only be used in appropriate facilities, and in compliance with the principle of least restriction, to prevent imminent harm to the person concerned or others, and in proportion to the risks entailed.

2. Such measures should only be used under medical supervision, and should be appropriately documented.

3. In addition:

i. the person subject to seclusion or restraint should be regularly monitored;
ii. the reasons for, and duration of, such measures should be recorded in the person's medical records and in a register.

4. This Article does not apply to momentary restraint.

Article 28 – Specific treatments

1. Treatment for mental disorder that is not aimed at producing irreversible physical effects but may be particularly intrusive should be used only if no less intrusive means of providing appropriate care is available. Member states should ensure that the use of such treatment is:

i. subject to appropriate ethical scrutiny;
ii. in accordance with appropriate clinical protocols reflecting international standards and safeguards;

iii. except in emergency situations as referred to in Article 12, with the person's informed, written consent or, in the case of a person who does not have the capacity to consent, the authorisation of a court or competent body;
iv. fully documented and recorded in a register.

2. Use of a treatment for mental disorder with the aim of producing irreversible physical effects should be exceptional, and should not be used in the context of involuntary placement. Such a treatment should only be carried out if the person concerned has given free, informed and specific consent in writing. The treatment should be fully documented and recorded in a register, and used only:

i. in accordance with the law;
ii. subject to appropriate ethical scrutiny;
iii. in accordance with the principle of least restriction;
iv. if an independent second medical opinion agrees that it is appropriate; and
v. in accordance with appropriate clinical protocols reflecting international standards and safeguards.

Article 29 – Minors

1. The provisions of this Recommendation should apply to minors unless a wider measure of protection is provided.

2. In decisions concerning placement and treatment, whether provided involuntarily or not, the opinion of the minor should be taken into consideration as an increasingly determining factor in proportion to his or her age and degree of maturity.

3. A minor subject to involuntary placement should have the right to assistance from a representative from the start of the procedure.

4. A minor should not be placed in a facility in which adults are also placed, unless such a placement would benefit the minor.

5. Minors subject to placement should have the right to a free education and to be reintegrated into the general school system as soon as possible. If possible, the minor should be individually evaluated and receive an individualised educational or training programme.

Article 30 – Procreation

The mere fact that a person has a mental disorder should not constitute a justification for permanent infringement of his or her capacity to procreate.

Article 31 – Termination of pregnancy

The mere fact that a person has a mental disorder should not constitute a justification for termination of her pregnancy.

Chapter VI – Involvement of the criminal justice system

Article 32 – Involvement of the police

1. In the fulfilment of their legal duties, the police should coordinate their interventions with those of medical and social services, if possible with the consent of the person concerned, if the behaviour of that person is strongly suggestive of mental disorder and represents a significant risk of harm to him or herself or to others.

2. Where other appropriate possibilities are not available the police may be required, in carrying out their duties, to assist in conveying or returning persons subject to involuntary placement to the relevant facility.

3. Members of the police should respect the dignity and human rights of persons with mental disorder. The importance of this duty should be emphasised during training.

4. Members of the police should receive appropriate training in the assessment and management of situations involving persons with mental disorder, which draws attention to the vulnerability of such persons in situations involving the police.

Article 33 – Persons who have been arrested

If a person whose behaviour is strongly suggestive of mental disorder is arrested:

i. the person should have the right to assistance from a representative or an appropriate personal advocate during the procedure;
ii. an appropriate medical examination should be conducted promptly at a suitable location to establish:
a. the person's need for medical care, including psychiatric care;
b. the person's capacity to respond to interrogation;
c. whether the person can be safely detained in non-health care facilities.

Article 34 – Involvement of the courts

1. Under criminal law, courts may impose placement or treatment for mental disorder whether the person concerned consents to the measure or not. Member states should ensure that the person can effectively exercise the right to have the lawfulness of the measure, or its continuing application, reviewed by a court at reasonable intervals. The other provisions of chapter III should be taken into account in such placements or treatments; any non-application of those provisions should be justifiable.

2. Courts should make sentencing decisions concerning placement or treatment for mental disorder on the basis of valid and reliable standards of medical expertise, taking into consideration the need for persons with mental disorder to be treated in a place appropriate to their health needs. This provision is without prejudice to the possibility, according to law, for a court to impose psychiatric assessment and a psychiatric or psychological care programme as an alternative to imprisonment or to the delivery of a final decision.

Article 35 – Penal institutions

1. Persons with mental disorder should not be subject to discrimination in penal institutions. In particular, the principle of equivalence of care with that outside penal institutions should be respected with regard to their health care. They should be transferred between penal institution and hospital if their health needs so require.

2. Appropriate therapeutic options should be available for persons with mental disorder detained in penal institutions.

3. Involuntary treatment for mental disorder should not take place in penal institutions except in hospital units or medical units suitable for the treatment of mental disorder.

4. An independent system should monitor the treatment and care of persons with mental disorder in penal institutions.

Chapter VII – Quality assurance and monitoring

Article 36 – Monitoring of standards

1. Member states should ensure that compliance with the standards set by this recommendation and by mental health law is subject to appropriate monitoring. That monitoring should cover:

i. compliance with legal standards;
ii. compliance with technical and professional standards.

2. The systems for conducting such monitoring should:

i. have adequate financial and human resources to perform their functions;
ii. be organisationally independent from the authorities or bodies monitored;
iii. involve mental health professionals, lay persons, persons with mental disorder and those close to such persons;
iv. be coordinated, where appropriate, with other relevant audit and quality assurance systems.

Article 37 – Specific requirements for monitoring

1. Monitoring compliance with standards should include:

i. conducting visits and inspections of mental health facilities, if necessary without prior notice, to ensure:
   a. that persons are only subject to involuntary placement in facilities registered by an appropriate authority, and that such facilities are suitable for that function;
   b. that suitable alternatives to involuntary placement are provided;
ii. monitoring compliance with professional obligations and standards;
iii. ensuring powers exist to investigate the death of persons subject to involuntary placement or involuntary treatment, and that any such death is notified to the appropriate authority and is subject to an independent investigation;
iv. reviewing situations in which communication has been restricted;
v. ensuring that complaints procedures are provided and complaints responded to appropriately.

2. Appropriate follow-up of the results of monitoring should be ensured.

3. In respect of persons subject to provisions of mental health law, the persons conducting monitoring should be entitled:

i. to meet privately with such persons, and with their consent or that of their representatives, have access to their medical file at any time;
ii. to receive confidential complaints from such persons;
iii. to obtain from authorities or staff responsible for the treatment or care of such persons any information that may reasonably be considered necessary for the performance of their functions, including anonymised information from medical records.

Article 38 – Statistics, advice and reporting

1. Systematic and reliable anonymised statistical information on the application of mental health law and on complaints should be collected.

2. Those responsible for the care of persons with mental disorder should:

i. receive from those responsible for quality assurance and monitoring:
a. regular reports, and where possible publish those reports;
b. advice on the conditions and facilities appropriate to the care of persons with mental disorder;
ii. respond to questions, advice and reports arising from the quality assurance and monitoring systems.

3. Information on the implementation of mental health law and actions concerning compliance with standards should be made available to the public.