

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

RECOMMENDATION No. R (83) 2

OF THE COMMITTEE OF MINISTERS TO MEMBER STATES

CONCERNING THE LEGAL PROTECTION OF PERSONS SUFFERING

FROM MENTAL DISORDER PLACED AS INVOLUNTARY PATIENTS¹

*(Adopted by the Committee of Ministers on 22 February 1983
at the 356th meeting of the Ministers' Deputies)*

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 the laws on matters of common interest ;

Having regard to the Convention for the Protection of Human Rights and Fundamental Freedoms and to its application by the organs established under that convention ;

Having regard to Recommendation 818 (1977) of the Consultative Assembly of the Council of Europe on the situation of the mentally ill ;

Considering that common action at European level will promote the desired better protection of persons suffering from mental disorder,

Recommends that the governments of the member states should adapt their laws to the rules annexed to this recommendation or adopt provisions in accordance with those rules when introducing new legislation.

RULES

Article 1

1. These rules concern the involuntary placement of persons suffering from mental disorder. Placement decided pursuant to criminal proceedings is not covered by these rules ; however, Rules 5, 9, 10 and 11 apply to such a placement.

2. Involuntary placement (hereinafter referred to as "placement") means the admission and detention for treatment of a person suffering from mental disorder (hereinafter referred to as "patient") in a hospital, other medical establishment or appropriate place (hereinafter referred to as "establishment"), the placement not being at his own request.

1. When this recommendation was adopted and in application of Article 10.2.c of the Rules of Procedure for the meetings of the Ministers' Deputies, the Representatives of the following member states reserved the right of their governments to comply or not with the provisions indicated below of the rules appended hereto :

- The Federal Republic of Germany : Articles 3.a and 6.b ;
- Ireland : Articles 4.2 last sentence and 3 last sentence, and 9.2 ;
- Liechtenstein : Articles 4.2 last sentence and 3 first sentence, and 6.b ;
- The Netherlands : Articles 3.a, 4.4 and 6 ;
- Sweden : Article 6.b ;
- Switzerland : Articles 4.1 last sentence, final phrase, and 2 last sentence, and 6.b ;
- The United Kingdom : Articles 4.2 last sentence and 3 last sentence, and 6.b.

3. The admission of a patient to an establishment for treatment at his own request does not fall within the field of application of these rules. However, these rules apply to cases where a patient who has originally been admitted at his own request is to be detained in an establishment in spite of his wish to be discharged.

Article 2

Psychiatrists and other doctors, in determining whether a person is suffering from a mental disorder and requires placement, should do so in accordance with medical science. Difficulty in adapting to moral, social, political or other values, in itself, should not be considered a mental disorder.

Article 3

In the absence of any other means of giving the appropriate treatment :

a. a patient may be placed in an establishment only when, by reason of his mental disorder, he represents a serious danger to himself or to other persons ;

b. states may, however, provide that a patient may also be placed when, because of the serious nature of his mental disorder, the absence of placement would lead to a deterioration of his disorder or prevent the appropriate treatment being given to him.

Article 4

1. A decision for placement should be taken by a judicial or any other appropriate authority prescribed by law. In an emergency, a patient may be admitted and retained at once in an establishment on the decision of a doctor who should thereupon immediately inform the competent judicial or other authority which should make its decision. Any decision of the competent judicial or other authority mentioned in this paragraph should be taken on medical advice and under a simple and speedy procedure.

2. Where a decision for placement is taken by a non-judicial body or person, that body or person should be different from that which originally requested or recommended placement. The patient should immediately be informed of his rights and should have the right of appeal to a court which should decide under a simple and speedy procedure. Moreover, a person whose duty it is to assist the patient to decide whether to appeal should be designated by an appropriate authority, without prejudice to the right of appeal of any other interested person.

3. When the decision is taken by a judicial authority or when an appeal is made before a judicial authority against the decision of placement by an administrative body, the patient should be informed of his rights and should have the effective opportunity to be heard personally by a judge except where the judge, having regard to the patient's state of health, decides to hear him through sole form of representation. He should be informed of his right to appeal against the decision ordering or confirming the placement and, if he requests it or the judge considers that it would be appropriate, have the benefit of the assistance of a counsel or of another person.

4. The judicial decisions referred to in paragraph 3 should be open to appeal.

Article 5

1. A patient put under placement has a right to be treated under the same ethical and scientific conditions as any other sick person and under comparable environmental conditions. In particular, he has the right to receive appropriate treatment and care.

2. A treatment which is not yet generally recognised by medical science or presents a serious risk of causing permanent brain damage or adversely altering the personality of the patient may be given only if the doctor considers it indispensable and if the patient, after being informed, has given his express consent. If the patient is not capable of understanding the nature of the treatment, the doctor should submit the matter for decision to an appropriate independent authority prescribed by law which should consult the patient's legal representative, if any.

3. Clinical trials of products and therapies not having a psychiatric therapeutic purpose on persons suffering from mental disorder, subject to placement, should be forbidden. Clinical trials having a psychiatric therapeutic purpose are a matter for national legal provisions.

Article 6

The restrictions on personal freedom of the patient should be limited only to those which are necessary because of his state of health and for the success of the treatment ; however, the right of a patient :

- a.* to communicate with any appropriate authority, the person mentioned in Article 4 and a lawyer, and
 - b.* to send any letter unopened,
- should not be restricted.

Article 7

A patient should not be transferred from one establishment to another unless his therapeutical interest and, as far as possible, his wishes are taken into account.

Article 8

1. A placement should be for a limited period or, at least, the necessity for placement should be examined at regular intervals. The patient can request that the necessity for placement should be considered by a judicial authority at reasonable intervals. The rules in Article 4, paragraph 3, apply.
2. The placement may be terminated at any moment on the decision :
 - a.* of a doctor, or
 - b.* of a competent authority,acting on his own initiative or at the request of the patient or any other interested person.
3. The termination of the placement does not necessarily imply the end of treatment which may continue on a voluntary basis.

Article 9

1. The placement, by itself, cannot constitute, by operation of law, a reason for the restriction of the legal capacity of the patient.
2. However, the authority deciding a placement should see, if necessary, that adequate measures are taken in order to protect the material interests of the patient.

Article 10

In all circumstances, the patient's dignity should be respected and adequate measures to protect his health taken.

Article 11

These rules do not limit the possibility for a member state to adopt provisions granting a wider measure of legal protection to persons suffering from mental disorder subject to placement.