



Panel 8: Deprivation of Liberty and Involuntary Medical Treatment

Kees Blankmann, Netherlands; Anne Saris, Canada; Moderator: Tanja Henking, Germany

Dutch point of view:

Kees Blankmann, Netherlands

When discussing deprivation of liberty and involuntary medical treatment the right of freedom to move and the right of integrity of the body are at stake. Deprivation of liberty and forced treatment also affect other rights such as the right of privacy.

The Committee on the rights of persons with disabilities formulated guidelines regarding art. 14 of the CRPD. These guidelines on the right to liberty and security of persons with disabilities exceed the standards that can be derived from the jurisprudence of the European Court of Human Rights in Strasbourg. A favourable development would be that the European Court could decide to absorb CRPD standards by more and more referring to them in their judgements regarding violations of human rights.

Jurisdictions in Western Europe have a different approach in assuring that deprivation of liberty and involuntary treatment are only applied as a last resort and that sufficient safeguards are in place. For a better understanding and assessment of the several options the picture of a triangle might be helpful; the client is situated on top of this triangle; at the other two angles we find the professional carer and the representative. The triangle represents the playingfield in which treatmentdecisions are made, preferably by the client himself. Historically in this model the professional carer made most of the decisions. Decision-making by the professional or by the representative must be minimized and appeal to the court should be available.

Canadian point of view:

Anne Saris, Canada

In Quebec, deprivation of liberty is mainly regulated by the 1997 [*Act respecting the protection of persons whose mental state presents a danger to themselves or to others*](#). This law establishes a process deemed to be protective of the patient's rights by requiring the issuance of a court order (Court of Quebec) in order to confine or submit a patient to a psychiatric examination and impose strict deadlines.

Regarding involuntary medical treatment, article 16 of the Civil Code specifies that the authorization of the Superior Court is necessary where: 1) the person of full age who is incapable of giving their consent categorically refuses to receive care; or 2) the person who may give consent to care required by the state of health of a person of full age who is incapable of giving their consent is a) prevented from doing so or may not exist or b) without justification refuses to do so.

However, care can be understood as encompassing a medical treatment within a medical institution or solely confinement within such an institution.

As of August 1st 2016, the courts have issued approximately 1200 decisions regarding confinement under the 1997 Act and 400 decisions under article 16 CcQ dealing with involuntary medical treatment and/or confinement in a medical institution, the later typically for a length of 3 years.

The fact that the persons submitted to these measures often represent themselves in court without the help of a lawyer and cannot afford expert testimony, makes effective access to justice particularly difficult for them.

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