



## Recommendation 1235 (1994)<sup>1</sup>

# Psychiatry and human rights

### Parliamentary Assembly

1. The Assembly observes that there is no overall study on legislation and practice with regard to psychiatry covering the member states of the Council of Europe.
2. It notes that on the one hand, a body of case-law has developed on the basis of the European Convention on Human Rights and that on the other, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment has made a number of observations with regard to practices followed in the matter of psychiatric placements.
3. It notes that, in a large number of member countries, legislation on psychiatry is under review or in preparation.
4. It is aware that, in many countries, a lively debate is currently focused on problems associated with certain types of treatment such as lobotomies and electroconvulsive therapy as well as on sexual abuse in psychiatric care.
5. It recalls 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 patients.
6. It considers that the time has come for the member states of the Council of Europe to adopt legal measures guaranteeing respect for human rights of psychiatric patients.
7. The Assembly therefore invites the Committee of Ministers to adopt a new recommendation based on the following rules:
  - 7.1. Admission procedure and conditions:
    - a. compulsory admission must be resorted to in exceptional cases only and must comply with the following criteria:

*there is a serious danger to the patient or to other persons;*

*an additional criterion could be that of the patient's treatment: if the absence of placement could lead to a deterioration or prevent the patient from receiving appropriate treatment;*
    - b. in the event of compulsory admission, the decision regarding placement in a psychiatric institution must be taken by a judge and the placement period must be specified. Provision must be made for the placement decision to be regularly and automatically reviewed. Principles established in the Council of Europe's forthcoming convention on bioethics must be respected in all cases;
    - c. there must be legal provision for an appeal to be lodged against the decision;
    - d. a code of patients' rights must be brought to the attention of patients on their arrival at a psychiatric institution;

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1. Assembly debate on 12 April 1994 (10th Sitting) (see [Doc. 7040](#), report of the Committee on Legal Affairs and Human Rights, Rapporteur: Mr Stoffelen; and [Doc. 7048](#), opinion of the Social, Health and Family Affairs Committee, Rapporteur: Mr Eisma). Text adopted by the Assembly on 12 April 1994 (10th Sitting).



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- e. a code of ethics for psychiatrists should be drawn up inter alia on the basis of the Hawaii Declaration approved by the General Assembly of the World Psychiatric Association in Vienna in 1983.

7.2. Treatment:

- a. a distinction has to be made between handicapped and mentally ill patients;
- b. lobotomies and electroconvulsive therapy may not be performed unless informed written consent has been given by the patient or a person, counsellor or guardian, chosen by the patient as his or her representative and unless the decision has been confirmed by a select committee not composed exclusively of psychiatric experts;
- c. there must be an accurate and detailed recording of the treatment given to the patient;
- d. there must be adequate nursing staff appropriately trained in the care of such patients;
- e. patients must have free access to a "counsellor" who is independent of the institution; similarly, a "guardian" should be responsible for looking after the interests of minors;
- f. an inspection system similar to that of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment should be set up.

7.3. Problems and abuses in psychiatry:

- a. the code of ethics must explicitly stipulate that it is forbidden for therapists to make sexual advances to patients;
- b. the use of isolation cells should be strictly limited and accommodation in large dormitories should also be avoided;
- c. no mechanical restraint should be used. The use of pharmaceutical means of restraint must be proportionate to the objective sought, and there must be no permanent infringement of individuals' rights to procreate;
- d. scientific research in the field of mental health must not be undertaken without the patient's knowledge, or against his or her will or the will of his or her representative, and must be conducted only in the patient's interest.

7.4. Situation of detained persons:

- a. any person who is imprisoned should be examined by a doctor;
- b. a psychiatrist and specially trained staff should be attached to each penal institution;
- c. the rules set out above and the rules of ethics should be applied to detained persons and, in particular, medical confidentiality should be maintained in so far as this is compatible with the demands of detention;
- d. sociotherapy programmes should be set up in certain penal institutions for detained persons suffering from personality disorders.