Involuntary Admission to a Psychiatric Hospital: Recent European Developments

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1. Introduction

Attention for the legal position of psychiatric patients has greatly increased during the course of the seventies. As a result, among other things, the legislation with respect to involuntary admission to psychiatric hospitals was revised in a large number of European countries. Partly under the influence of the jurisprudence of the European Court of Human Rights in Strasbourg the patient's legal position has improved in the new legislation. The criteria for a civil commitment have been made more stringent, the procedural guarantees have increased. Legal aid was introduced for patients and attention is now paid to the patient's legal position during his involuntary stay in hospital (internal legal position).

This paper contains a summary of an investigation into the legislation with respect to involuntary admission to psychiatric hospitals in nine European countries. The objective of the investigation was to give an outline of the rules regarding involuntary admission to a psychiatric hospital as they stand in Europe today. At the centre was the question to what extent the legislation investigated takes into consideration the aspect of the patient's legal protection.

The following countries were included in the investigation: Austria, Belgium, Denmark, England/Wales, France, Germany, Italy, the Netherlands, and Switzerland. In the countries mentioned a revision of the legislation was effected in the period 1978–1992. For an overview of the legislation in force and the period of its realization please refer to Appendix 1. The research took place in 1991/1992. The relevant information was gathered primarily by analyzing the complete text of the national laws. The selection of countries was made on the basis of the availability of the legal text in the English, German, French or Dutch language. Wherever possible the text in its original
language was studied. The available literature (Appendix 2) was used as an additional source of information.

2. Legal Background

Until the beginning of the seventies the procedure and criteria for involuntary admission were dominated primarily by medical considerations. The large international emancipation and democratization movements in the 1960s played an important role in the improvement of individual legal rights for various categories of the socially disadvantaged. With regard to psychiatric patients one of the results was the new insight that the requirement of 'due process of law' was also applicable to their involuntary admission to a hospital. Another view being advocated was that patients could only be restricted in exercising their civil rights in cases which serve a compelling interest of the government, and even then, only if and when there was no less restrictive alternative available to serve that interest. In these strict requirements of proportionality and subsidiarity which limitations on the legal rights of the psychiatric patient must meet, the image of the patient as a citizen with rights emerged. It was stipulated that the concept of citizenship with rights constitutes the core of legal protection and should be applied in constitutional states as a principle upon which the legal regulation of involuntary admission must be based.

The concept of citizenship with rights entails that all citizens, no matter where they reside, whether in freedom or in freedom-restricting institutions, must be allowed to continue to participate optimally in the law and in the application of the fundamental principles and values of justice. This means that those who are institutionalized in a psychiatric hospital must continue to enjoy their constitutional rights and other substantive civil rights and that, insofar as this is not always possible, they must be maximally accommodated in the needs for justice which are specifically inherent to the institutionalization itself. The primary aim of legal protection is to award and strengthen procedural rights and possibilities, since these enable the individual to exercise legal rights and to contest decisions made with regard to him. This strengthening of individual autonomy and independence can be seen as one of the pre-conditions for an acceptable 'environment' as it should exist in a welfare state which is also concerned with the mental well-being of its citizens, a fortiori when involuntary admission in a psychiatric hospital is involved. As a result the discussion is no longer limited to the criteria and procedure for involuntary admission. Nowadays it includes the patient's legal rights during his stay in hospital (hereafter referred to as the patient's internal legal position) as well. In the legislation effected in the previous century