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INTERNATIONAL CONFERENCE
ON PATIENTS' RIGHTS

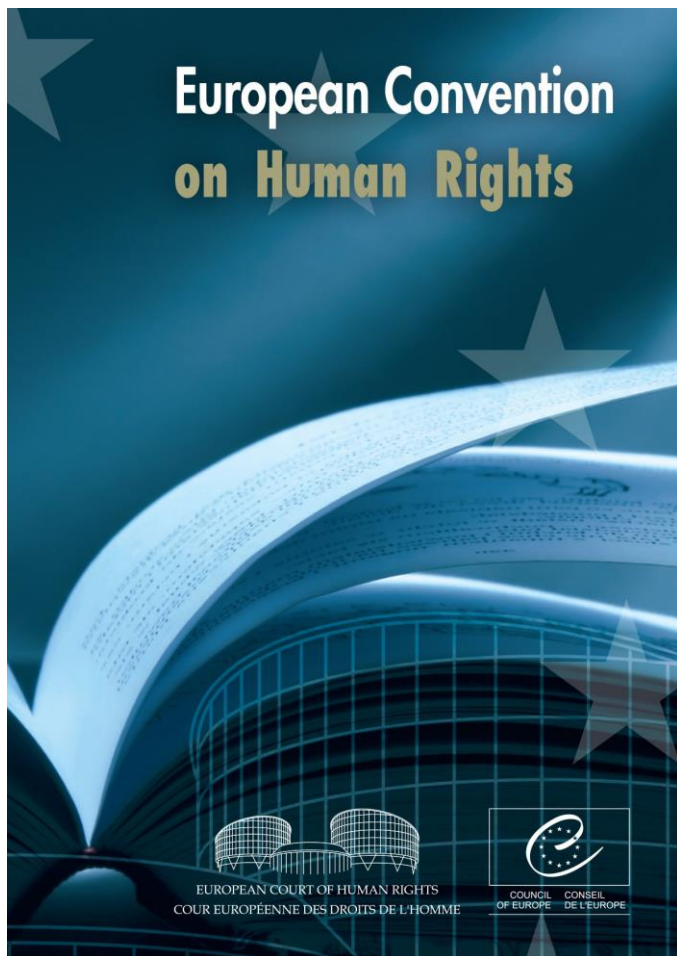
European human rights instruments and mental health

Case-law of the European Court of Human Rights





Normative background



Article 2 Right to life

„Everyone’s right to life shall be protected by law...”

Article 3 – Prohibition of torture, inhuman and degrading treatment

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

Article 8 - Right to private and family life

Everyone has the right to respect for his private and family life, his home and his correspondence.

Article 5 – Right to liberty and personal freedom

„Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
e) the lawful detention of...persons of unsound mind”

Article 14 - Prohibition of discrimination

„The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status”



Right to dignity

Article 8

Right to private life

protection of physical, moral and psychological integrity

right to choose or to exercise one's personal autonomy and the freedom to make own choices

mental health is a crucial part of private life associated with the aspect of moral integrity

right to refuse psychiatric medication is protected by Article 8 (*Bensaid v. the United Kingdom*)

compulsory medical / psychiatric treatment, medical treatment without consent even if it is of minor importance, constitutes an interference with the right to physical integrity (*Storck v. Germany, Shopov v. Bulgaria*)

deprivation / restriction of decision-making (legal capacity) constitutes an interference with the right to private life

broader aspects of autonomy : right to live according to one's choice (*A.-M.V. v. Finland*) independent living, issues of institutionalisation (*V.I. v. the Republic of Moldova*, 2024, and *Calvi and G.C. v. Italy*, 2023) and freedom from exploitation (*I.C. v. the Republic of Moldova*, 2025).



Freedom from torture, inhuman, degrading treatment



Article 3

forced treatment without medical necessity of mentally ill patients (*V.I. v. the Republic of Moldova*)

access to mental health care of persons deprived of their liberty

place and conditions of detention of mentally ill offenders/ involuntary psychiatric treatments / persons in confined in care homes (*Stanev v. Bulgaria*)

Protection of mental health patients confined in private psychiatric facilities (*Storck v. Germany*)

Involuntary psychiatric treatment (*Aggerholm v. Denmark*)

Use of physical restraint in psychiatric treatment (*Bures v. the Czech Republic*)



Approaches to autonomy

Prevention of harm

Herczegfalvy v. Austria (1992)

Naumenko v. Ukraine (2004)

Obligation to protect the well-being of the person

Substituted decision-making

- Has the medical necessity been convincingly shown?
- Established principles of medicine are decisive
- Were the measures the consequence of the patient's behaviour?

Measure which is a therapeutic necessity cannot be regarded as inhuman

Prevention of arbitrariness

Gorobet v. Moldova (2011)
Bataliny v. Russia (2015)

Obligation to set up safeguards

- Are there procedural guarantees? Were they respected?
- Careful scrutiny of domestic legislation and decision-making
- Unlawful and arbitrary treatment is capable to arouse in the applicant feelings of fear, anguish and inferiority

Respect for self-determination

Fernandes de Oliveira v. Portugal

Obligation to respect autonomy :

- Tailor-made protective measures
- Provision of care does not entail deprivation of legal capacity
- Authorities must discharge their obligation to protect the physical and psychological well-being of a patient without infringing the autonomy of the person



Who gets to decide?

Capacity assessment

Adults with requisite capacity

(Pindo Mulla v. Spain)

- Reasonable grounds to doubt the individual's decision?

Patients with syndromes of mental illness

(Arskaya v. Ukraine)

- disability affects cognitive skills: rendering the individual unable to adequately understand the significance and the implications of a decision

Patients with restricted legal capacity

Patient's lack the ability to administer his/ her affairs *(A.-M.V. v. Finland)*

Patients who are entirely incapable of deciding for themselves *(Herczegfalvy v. Austria)*

Individuals who are unable to express a coherent view *(D.D. v. Lithuania)*



Consent to / refusal of treatment by mentally ill patients

Informed decision

- made freely and autonomously, aware of the implications
- decision must be clear, specific and unambiguous
- „reasonable efforts” should be made to dispel doubts or uncertainty

State's obligation

- legal framework provides safeguards of obtaining a valid, free and prior consent for medical interventions (*G.M. and Others v. Republic of Moldova*)
- due account of the particularities of mental condition and its evolution over time
- decision-making capacity must be objectively established (*Traskunova v. Russia*)
- put in place supported decision-making in the exercise of legal capacity and in making own decisions



Involuntary treatment

When is treatment
involuntary?

- Involuntary admission to hospital cannot automatically entail involuntary treatment (*Bataliny v. Russia*)
- voluntarily admitted patients losing choices over treatment (*Clipea and Grosu v. the Republic of Moldova*)

Obligation of the
state

- requirements of Article 3 permit of no derogation (*Herczegfalvy v. Austria*)
- Ensure independent decision-making process and review (*X. v. Finland*)
- adequate criminal legislation to dissuade the practice of non-consensual medical intervention
- mechanisms to prevent abuse (*Traskunova v. Russia*)
- position of inferiority and powerlessness which is typical of patients confined in psychiatric hospitals calls for increased vigilance (*G.M. and Others v. the Republic of Moldova*)