REPORT ON NATIONAL LEGISLATION AND PRACTICE CONCERNING INVOLUNTARY PLACEMENT AND TREATMENT IN PSYCHIATRIC INSTITUTIONS WITH A SPECIFIC FOCUS ON THE PROCEDURAL SAFEGUARDS

August 2024

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Report on national legislation and practice concerning involuntary placement and treatment in psychiatric institutions with a specific focus on the procedural safeguards

Prepared as part of the Council of Europe project
"Protection of Human Rights in Biomedicine II"
implemented in the framework of the Council of Europe
Action Plan for Armenia 2023-2026

Author Sergey Ghazinyan

August 2024

Council of Europe

Report on national legislation and practice concerning involuntary placement and treatment in psychiatric institutions with a specific focus on the procedural safeguards

Cover photo: Shutterstock

This publication has not been copy-edited by the SPDP Editorial Unit to correct typographical and grammatical errors

Table of Contents

List of Abbreviations

CC	Civil Code of the Republic of Armenia
Ministers	Committee of Ministers of the Council of Europe
CPC	Civil Procedure Code of the Republic of Armenia
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
Convention	European Convention on Human Rights
EU	European Union
Court	European Court of Human Rights
FRA	EU Fundamental Rights Agency
HRD	Human Rights Defender
MoLSA	Ministry of Labour and Social Affairs
MoH	Ministry of Health
MoJ	Ministry of Justice

Introduction

Involuntary placement and treatment in mental health institutions should be viewed as one of the most sensitive areas of mental health care. Considering the scale of intervention to the rights of persons and the risks of violations, necessary safeguards are important. Particular attention should be paid to the legal and practical dimensions of these interventions, highlighting the balance between protecting individual rights and ensuring public safety, which is a delicate one.

The Action Plan of the National Strategy on Human Rights Protection 2023-2025 envisaged the review of the legal regulations of the CPC to provide for the person being subjected to involuntary placement and his/her family members with the right to access to court for the purpose of terminating the decision on involuntary placement. According to the national strategy, the main responsible body for this activity is the Ministry of Justice (MoJ), and the co-performers are the Ministry of Health (MoH), the Ministry of Territorial Administration and Infrastructures, the Supreme Judicial Council, the Office of the Representative for International Legal Matters and the Ministry of Labour and Social Affairs (MoLSA).

The implementation of the given activity is envisaged with two stages, namely, to develop a draft legislative package on making changes to the CPC and associated laws in line with international best practices and standards and submit it to the Government (second half of 2024), and following the finalisation of the package, submit it for the approval of the National Assembly (first half of 2025).[1] In this frame, following the request from the MoJ, it was decided to carry out an in-depth analysis of the national legislation and practice concerning involuntary placement and treatment in mental healthcare institutions with a specific focus on the procedural safeguards.

In Armenia, as in many countries, this balance is enshrined in a complex framework of laws and regulations. The Armenian legislative and judicial systems play a crucial role in safeguarding the rights of individuals subjected to involuntary treatment, ensuring that their dignity, autonomy, and legal rights are respected.

This report will explore the legislative framework governing involuntary treatment in Armenia, examining both the legal standards in place and their practical implementation. It will also explore the mechanisms available for individuals to challenge involuntary treatment decisions and access effective remedies. By analysing statistical data and current practices, conducting interviews with different stakeholders, and carrying out desk

1. Action Plan deriving from the National Strategy on Human Rights Protection for 2023-2025 approved by the RA Government Decision N 1674-Լ on September 28, 2023, Annex N 3, Activity 3.6, available at: https://www.moj.am/page/575.

research, the report aims to highlight the strengths and weaknesses of the existing system, offering recommendations for improvements where necessary.

It should be noted that the assessment does not intend to cover any form of compulsory treatment or placement as a coercive medical measure (security measure) envisaged by the Criminal Code.

In this frame, the directions of analysis can be divided into two main parts: the procedure for involuntary placement and the safeguards therein, the procedure for terminating the court decision on involuntary placement ("release from detention") and the scope of persons/bodies eligible to initiate the procedure. Particular attention is paid to the peculiarities in case of persons deprived of legal capacity.

Under several articles of the Convention, the Court examined different aspects of the given issue. The scope of studies includes not only the case law of the Court, but also the relevant international and Council of Europe standards, including those set forth by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). The legislative regulations in the Law on Psychiatric Care and Service, Civil Procedure Code (CPC) and other legal acts, as well as the precedent decisions of the domestic courts and the reports of the Human Rights Defender of Armenia (HRD) and the NGOs of the field, were analysed.

The current report is complemented by the comparative study developed by Ms Ivana Roagna, the Council of Europe international consultant, on national legislation of selected European countries concerning involuntary placement and treatment in psychiatric institutions with a specific focus on procedural safeguards.

The consultant would like to thank the Project team, the Council of Europe international consultant, Ms Ivana Roagna, and the Ministry of Justice (MoJ) colleagues, whose valuable support was important in completing the assessment. Special thanks are also given to the representatives of the various entities, including the state institutions, NGOs, and psychiatric facilities, who participated in the interviews and provided essential insights and perspectives on the legislation and practice concerning involuntary placement and treatment in mental healthcare institutions.

Procedure for involuntary placement and safeguards therein

Involuntary treatment and placement within the context of mental health care is a critical issue that lies at the intersection of medical necessity and human rights. The deprivation of liberty under Article 5 (1) (e) of the Convention has a dual function: on the one hand, the social function of protection, and on the other hand, a therapeutic function that is related to the individual interest of the person of unsound mind in receiving an appropriate and individualised form of therapy or course of treatment.[2]

In Armenia, the legal framework governing involuntary treatment is shaped by both domestic legislation and international obligations, including those under the Convention. The legislation provides an opportunity for involuntary placement and treatment of a person in a psychiatric institution. Law on Psychiatric Care and Service defines "involuntary treatment" as transferring the person to a psychiatric institution and subjecting him/her to psychiatric treatment without consent.[3] The same law also stipulates that "placement" is the voluntary, involuntary or coercive admission of a person with mental health issues to a psychiatric institution for the purpose of providing inpatient psychiatric care and services.[4] Considering the context, the Law on Psychiatric Care and Service uses the terms "involuntary treatment" and "involuntary placement".

For the purpose of the current study, an annual breakdown of statistics from 2021 to 2023 on the applications for involuntary placement submitted to the courts by psychiatric institutions was requested from the Staff of the Supreme Judicial Council: Judicial Department. The idea was to have a clear picture of the scale of the implementation of involuntary placement as a protection measure with respect to persons with mental health issues.

2. *Rooman v. Belgium* [GC] (Application No. 18052/11, judgement 31 January 2019), available at: https://hudoc.echr.coe.int/eng?i=001-189902.
3. Law on Psychiatric Care and Service of the Republic of Armenia, Article 3 (1) (15), available at: https://www.arlis.am/DocumentView.aspx?DocID=146066.
4. Ibid. Article 3 (1) (14).

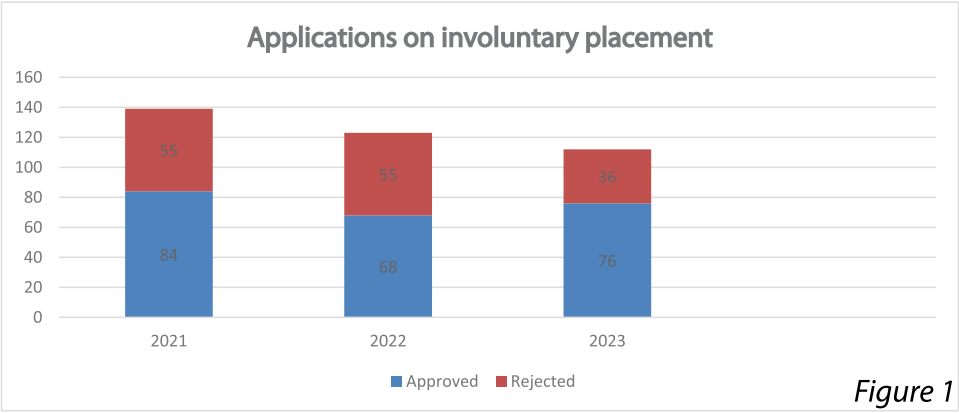

Figure 1

As seen from the table above, most applications for involuntary placement were approved (in 2021, 60% of the total 139; in 2022, 55% of the total 123; and in 2023, 68% of the total 112). Meanwhile, on a positive note, it should also be mentioned that the annual number of applications for involuntary placement submitted to the courts by psychiatric institutions was annually decreased.

The Law on Psychiatric Care and Service sets out specific grounds under which individuals may be subjected to involuntary placement, which will also entail involuntary treatment. In particular, a person with a mental health problem may be involuntarily placed in a psychiatric institution without his/her consent in order to prevent the threat arising from him/her (including against his/her or the other person's life or health), if without placement, the treatment of a person cannot be organised effectively, and a delay in psychiatric treatment may pose a threat to the person's life, health or surroundings. Moreover, in the case of the existence of a legal representative (children and persons deprived of legal capacity), his/her consent will be sufficient for the placement of a person with mental health issues into a psychiatric institution.[5]

Meanwhile, it is essential to highlight that these measures must be carefully balanced with the rights enshrined in the Constitution and the Convention, particularly the right to liberty and security and the right to respect for private and family life. It is required that any interference with these rights, such as involuntary treatment, must be prescribed by law, necessary, and proportionate.

In case of grounds for launching the procedure for involuntary placement, within 72 hours after placement, a person with a mental health problem must be examined by the Psychiatric Commission.[6] If the justification for

5. Ibid. Article 24 (1).

6. According to the Law on Psychiatric Care and Service (Article 3 (1) (17), the psychiatric commission is a group consisting of at least two psychiatrists and, if necessary, also other medical specialists, which is established by a legal act of the executive body of the psychiatric institution,

involuntary placement is confirmed, the executive body of the psychiatric institution applies to the court to subject the person to involuntary placement. Until the decision of the court enters into legal force, a person with a mental health problem without his/her informed consent is provided only urgent and "without delay" psychiatric care and service.

As it was reported during the interviews and observed by the HRD, in practice, almost no one among those with regards to whom there is a pending application for involuntary placement gives consent for the treatment, and the psychiatric institution usually applies medicinal sedation.[7]

Regulations on the court proceedings of involuntary placement are envisaged in the special chapter of the CPC, and the cross-reference is stipulated in the Law on Psychiatric Care and Service. In particular, it is prescribed that upon the application of the executive body of the psychiatric institution where the person is treated, the court of the first instance of general jurisdiction of the community where the institution is located should make the decision on involuntary placement.[8]

Based on the results of the application examination, the court of first instance decides to grant or reject the application, which becomes legally effective from the moment of publication. The decision to grant the application is the basis for the involuntary placement of the person with mental health issues in a psychiatric institution for a maximum period of six months, and in case of rejecting it, the person should be released.[9] According to the Law on Psychiatric Care and Services, if at the end of six months, the grounds for involuntary treatment have not disappeared for a person with a mental health problem, then within 72 hours, the executive body of the psychiatric organisations submits another application to the court with the request to subject the person to involuntary placement.[10] It was observed that in not all cases, the courts explicitly mention the duration of placement, stating that the person should be placed in the psychiatric institution for up to six months. According to the NGOs, involuntary treatment can last 70, 80, 100, 150, and sometimes 200 days.[11]

---

in each case of involuntary hospitalisation, and is authorised to assess the presence or absence of a mental disorder of a person, provide a professional opinion or a reasoned decision regarding a person's state of mental health posing a threat to himself/herself or the public and all medical issues arising from it.

7. Ad hoc report of the Human Rights Defender on the Human Rights Protection of Persons with Mental Health Issues in the Psychiatric Institutions, page 36, available at: https://www.ombuds.am/images/files/cdc79ed63e188008962836823aa696ab.pdf.

8. Civil Procedure Code, Articles 266 and 267, available at: https://www.arlis.am/DocumentView.aspx?DocID=190625.

9. Ibid. Article 270.

10. Law on Psychiatric Care and Service, Article 24 (4), available at: https://www.arlis.am/DocumentView.aspx?DocID=146066.

11. Report on the Institute of Involuntary Placement and Treatment in Armenia, page 32, available at: https://hcav.am/hospitalization-17-11-2023/.

Considering the need for special knowledge and expertise for the assessment of the state of mental health of the person, this model seems to be effective also in practice. According to the procedure, the application should contain the grounds for the request for involuntary placement and present the conclusion of the examination of the Psychiatric Commission.

In this respect, it should be recalled that for the purpose of the deprivation of liberty of persons suffering from mental disorders in the context of Article 5 (1) (e) of the Convention, the Court has held that to deprive an individual of liberty as being of "unsound mind"[12] the following three minimum conditions should be satisfied:

- the individual must be reliably shown, by objective medical expertise, to be of unsound mind unless emergency detention is required;
- the individual's mental disorder must be of a kind to warrant compulsory confinement. The deprivation of liberty must be shown to have been necessary in the circumstances;
- the mental disorder, verified by objective medical evidence, must persist throughout the period of detention.[13]

True mental disorder must be established before a competent authority based on objective medical expertise. In this respect, the Court held in the judgment on *Ruiz Rivera v. Switzerland* that no deprivation of liberty of a person considered to be of "unsound mind" may be deemed in conformity with Article 5 (1) (e) of the Convention if it has been ordered without seeking the opinion of a medical expert.[14] Any other approach falls short of the required protection against arbitrariness inherent in Article 5 of the Convention. Furthermore, the mental disorder must be of a kind or degree warranting compulsory confinement.[15] In the case of the Armenian context, as seen from the abovementioned regulations, the expert opinion should be submitted to the court along with the application for involuntary placement.

Though it is crucial to have an expert opinion in the course of assessment, the court should be the body responsible for holding the final decision on the involuntary placement. As noted by the Court, the competent domestic

12. As stated in the Court judgement on *Rakevich v. Russia* (available at: https://hudoc.echr.coe.int/eng?i=001-61414), the term "a person of unsound mind" does not lend itself to precise definition since psychiatry is an evolving field, both medically and in social attitudes. However, it cannot be taken to permit the detention of someone simply because his or her views or behaviour deviate from established norms.

13. Guide on Article 5 of the European Convention on Human Rights, Right to Liberty and Security (Updated on 29 February 2024), Paragraph 117, available at: https://ks.echr.coe.int/documents/d/echr-ks/guide_art_5_eng.

14. *Ruiz Rivera v. Switzerland* (Application No. 8300/06, judgment 18 May 2014), available at: https://hudoc.echr.coe.int/eng?i=001-141434.

15. Research report on the Rights of persons in relation to involuntary placement and treatment in mental healthcare facilities, Paragraph 10, with further references available at: https://rm.coe.int/rights-of-persons-in-relation-to-involuntary-placement-and-treatment-i/1680ab369a.

authority must subject the expert advice before it to strict scrutiny and reach its own decision on whether the person concerned suffers from a mental disorder.[16] Meanwhile, it was reported during the interviews that judges need further enhancement of capacity on how to make the justified decision about the issue of involuntary placement of a person with mental health issues.

Judges should conduct a comprehensive analysis, collecting and covering evidence other than the expert opinion of the psychiatric institution initiating the involuntary placement. This may include a request for alternative expert opinion, study of medical history, questioning community social workers or other relevant persons, etc. Furthermore, developing guiding documents and including the topic of involuntary placement into the regular training programme of judges at the Academy of Justice would be useful.

The CPC stipulates safeguards for the procedure of involuntary placement, which are also supported by the Council of Europe standards. It should be referred on a positive note that according to the CPC, the presence of the individual regarding whom the involuntary placement issue is being discussed and his/her legal representative (in case of impossibility, the representative of the guardianship and trusteeship body) in the court hearing is mandatory.[17]

The safeguard on the presence of a person concerned in the court hearing is in line with the Court case law. It aims to ensure effective guarantees against arbitrariness given the vulnerability of individuals suffering from mental disorders. Furthermore, it follows the need to adduce very weighty reasons to justify any restriction of their rights. Pursuant to the *M.S. v. Croatia* (no. 2), it is essential that the person concerned should have access to a court and the opportunity to be heard either in person or, where necessary, through some form of representation.[18] The standard of ensuring the right to be heard for the person concerning whom the procedure of involuntary placement was launched is also set by the respective Ministers recommendations.[19]

16. *Ilnseher v. Germany* [GC] (Application No. 10211/12 and 27505/14, judgement 4 December 2018), available at: https://hudoc.echr.coe.int/eng?i=001-187540.
17. Civil Procedure Code, Article 269 (3) and (4), available at: https://www.arlis.am/DocumentView.aspx?DocID=190625.
18. *M.S. v. Croatia (no. 2)* (Application No. 75450/12, judgement 19 February 2015), available at: https://hudoc.echr.coe.int/eng?i=001-152259.
19. Recommendation Rec (83)2 of the Committee of Ministers to member states Concerning the Legal Protection of Persons Suffering from Mental Disorder Placed as Involuntary Patients, Article 4 (3) available at: https://www.justice.gov.sk/dokumenty/2021/05/recR832.pdf.
Recommendation Rec (2004)10 of the Committee of Ministers to member states Concerning the Protection of the Human Rights and Dignity of Persons with Mental Disorder, Article 20 (1) (i), available at: https://rm.coe.int/rec-2004-10-em-e/168066c7e1.

The observations of the EU Fundamental Rights Agency (FRA) show that in the vast majority of EU member states' laws require the person's presence at the hearing that will decide on their involuntary placement.[20]

In synchrony with the regulation of the Law on Psychiatric Care and Service, the CPC stipulates that the application should be submitted within 72 hours after the placement of the person in a psychiatric institution and the withdrawal of written consent to receive medical care and service. The court can declare the application inadmissible if the executive body of the psychiatric institution fails to present the grounds for involuntary placement and/or to present the conclusion of the Psychiatric Commission.[21]

The deadlines set for the procedure of examination of the application for involuntary placement should be welcomed. In particular, the CPC states that the court should decide the admissibility of the application within one day. The court hearings for examining the application should be held within five days of the date of admission. Having initiated the case, the court simultaneously extends the period of the person's placement in the psychiatric institution for the period necessary to examine the case. Though it is considered as "special proceedings" in the frame of the CPC, the proceedings on involuntary placement before the court do not stipulate any specific timeframe for delivering the final decision by the first instance court, which causes issues in ensuring unified practice. This problem was also flagged by the HRD, highlighting that the length of proceedings may be extended to an indefinite period, while at that time, the person will be deprived of liberty.[22]

In the frame of the current assessment, statistical data was requested from the Staff of the Supreme Judicial Council: Judicial Department, particularly on the minimum and maximum length of the court proceedings on the involuntary placement of a person with mental health issues to a psychiatric institution in 2021, 2022 and 2023. According to the Judicial Department the average length in 2021 was 10 days; in 2022 and 2023, it was

8. However, the revision of individual cases revealed that the length varies significantly during the given period.

20. EU Fundamental Rights Agency (FRA), "Involuntary placement and involuntary treatment of persons with mental health problems", page 37, available at: https://fra.europa.eu/en/publication/2012/involuntary-placement-and-involuntary-treatment-persons-mental-health-problems.

21. Ibid. Article 268.

22. Ad hoc report of the Human Rights Defender on the Human Rights Protection of Persons with Mental Health Issues in the Psychiatric Institutions, pages 35-36, available at: https://www.ombuds.am/images/files/cdc79ed63e188008962836823aa696ab.pdf.

Year	Maximum length	Minimum length
2021	58	2
2022	22	2
2023	18	2

Figure 2

Furthermore, according to the reports of the interviews, the court proceedings were more than 10 days, on average. As it was reported by the HRD as the National Preventive Mechanism under the Optional Protocol to the United Nations Convention against Torture (NPM), a court hearing was scheduled after a long period of time, up to 12 days after the application of the psychiatric institution was admitted. In practice, it used to take more than two weeks from the submission of an application by the psychiatric institution regarding the involuntary placement of persons with mental health problems to the passing of the court's decision.[23] A similar conclusion was made in the report prepared by the NGOs, stating that, on average, the duration from placement to the court decision is 12 days.[24] Furthermore, securing the 72-hour rule was sometimes practically ineffective during non-working days. Even if the psychiatric institution was ready to submit hard copies, the courts were not ready to register.

Though the statistics for 2024, which will include the period after the establishment of the new electronic system (after 1 February 2024) for submitting applications to the court on civil matters (see paragraphs 39-41), are not finalised yet, the decrease in the maximum length of proceedings over the years can be observed. However, it should also be highlighted that despite "special proceedings", prima facie excessive length may be reported, causing additional issues. As reported during the interviews, in the period between the application and the court's final decision, the psychiatric institution cannot start the actual treatment and usually applies medicinal sedation.

The necessity for a reasonable length of proceedings in cases of involuntary placement is crucial, considering that in this period, the person with mental health issues is deprived of liberty in the psychiatric institution, causing a severe intervention to his/her right to liberty and security. On a number of occasions, the Court found that the question of the applicability of Article 5 arose in a variety of circumstances, including with regard to the placement

23. 2023 Annual Report of the Human Rights Defender as the National Preventive Mechanism, page 29, available at: https://ombuds.am/images/files/c633369afec7fa8d34d985ee99c2aeaa.pdf.
24. Report on the Institute of Involuntary Placement and Treatment in Armenia, page 7, available at: https://hcav.am/hospitalization-17-11-2023/.

of individuals in psychiatric or social care institutions.[25]

According to Article 5 (4) of the Convention, everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.[26] Firstly, it should be noted that the relevant time at which a person must be reliably established to be of unsound mind, for the requirements of Article 5 (1) (e), is the date of the adoption of the measure depriving that person of his liberty as a result of that condition.[27]

In guaranteeing detained persons a right to institute proceedings to challenge the lawfulness of their detention, it also proclaims their right, following the institution of such proceedings, to a speedy judicial decision concerning the lawfulness of detention and the ordering of its termination if it proves unlawful. The notion of "speedily" (à bref délai) indicates a lesser urgency than that of "promptly" (aussitôt) in Article 5 (3). However, where a decision to detain a person has been taken by a non-judicial authority rather than a court, the standard of "speediness" of judicial review under Article 5 § 4 comes closer to the standard of "promptness" under Article 5 (3).[28]

According to the CPT standards, stated in its statement published as part of the annual report in 1998 (CPT: Involuntary placement in psychiatric establishments 1998), in any event, a person who is involuntarily placed in a psychiatric establishment by a non-judicial authority must have the right to bring proceedings by which the lawfulness of his detention shall be decided speedily by a court.[29]

Moreover, pursuant to Recommendation Rec (83)2 of the Ministers to member states Concerning the Legal Protection of Persons Suffering from Mental Disorder Placed as Involuntary Patients, any decision of the competent judicial or other authority on the involuntary placement should be taken on medical advice and under a simple and speedy procedure.[30]

25. Guide on Article 5 of the European Convention on Human Rights, Right to Liberty and Security (Updated on 29 February 2024), Paragraph 19, available at: https://ks.echr.coe.int/documents/d/echr-ks/guide_art_5_eng.

26. European Convention of Human Rights, Article 5 (4), available at: https://70.coe.int/pdf/convention_eng.pdf.

27. *Ilnseher v. Germany* [GC] (Application No. 10211/12 and 27505/14, judgement 4 December 2018), available at: https://hudoc.echr.coe.int/eng?i=001-187540.

28. Guide on Article 5 of the European Convention on Human Rights, Right to Liberty and Security (Updated on 29 February 2024), Paragraph 276-280, available at: https://ks.echr.coe.int/documents/d/echr-ks/guide_art_5_eng.

29. European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Involuntary placement in psychiatric establishments, Extract from the 8th General Report of the CPT, published in 1998, Paragraph 52, available at: https://rm.coe.int/16806cd43e.

30. Recommendation Rec (83)2 of the Committee of Ministers to member states Concerning the

Hence, it is of utmost importance to ensure that the courts examine the application on involuntary placement submitted by the executive body of the psychiatric institution in a "speedily" manner to escape excessive length of proceedings, potential undue deprivation of liberty, risks of any violation of human rights as well as ensure clearness and foreseeability for the person of concern.

It is recommended to consider stipulating in the CPC (Article 270) either a strict deadline for delivering the decision or a provision obliging the court to examine the cases on involuntary placement of the person with mental health issues as a matter of urgency.

In this frame it should be noted that from 1 February 2024, all procedural documents for new court cases under the civil court's jurisdiction, including the applications for involuntary placement, should be drawn up and submitted through the electronic system instead of the former postal service.[31] According to the information reported during the interviews, despite the technical and practical challenges that psychiatric institutions face while applying to the court, establishing the electronic system makes the procedure more efficient.

While welcoming the establishment of the electronic system and the increase in procedure efficiency on involuntary placement, there is still a need for further improvement. In particular, it was reported during the interviews that the psychiatric institutions did not receive a reply on who was the assigned judge. Considering the lack of communication in the process of application (no phone calls) and the time limit creates challenges.

Taking into account that the system is relatively new and there might be a lack of awareness and technical shortcomings, it is recommended to ensure regular monitoring of the system and discussions with the executive bodies of psychiatric institutions to further enhance the electronic system, considering their needs as well.

Another important safeguard is the free legal aid for the persons whose involuntary placement is being examined by the court. According to the CPC, the presence of the legal representative of the individual regarding whom the involuntary placement issue is being discussed in the court hearing is mandatory.[32] Furthermore, lawyers, including foreign lawyers accredited in accordance with the law, carry out the representation in court.[33] The CPC stipulates a special chapter dedicated to court representation.[34]

Legal Protection of Persons Suffering from Mental Disorder Placed as Involuntary Patients, Article 4 (2) available at: https://www.justice.gov.sk/dokumenty/2021/05/recR832.pdf.

31. Electronic Civil Proceedings, available at: https://cabinet.armlex.am/.

32. Civil Procedure Code, Article 269 (3), available at: https://www.arlis.am/DocumentView.aspx?DocID=190625.

33. Ibid. Article 52 (1).

34. Ibid. Article Section 1 Chapter 7.

Furthermore, the Law on Advocacy prescribes the scope and beneficiaries of free legal aid. It includes consultation in the preparation of lawsuits, applications, complaints and other procedural documents of a legal nature, including the provision of legal information and representation or defence in criminal proceedings and civil, administrative and constitutional cases. Representation is carried out in the first instance, in Courts of Appeal and Court of Cassation, as well as in the Constitutional Court. The beneficiaries of free legal aid in this context include also persons with mental health problems in a psychiatric institution.[35] The FRA findings show that this requirement is reflected in the vast majority of EU member states' laws, which provide for free legal support either in certain circumstances or automatically.[36]

Though the CPC and the Law on Advocacy do not explicitly mention the right of the person whose involuntary placement is being examined by the court to free legal aid, cases of those individuals benefitting from such services were reported in practice. In particular, according to the 2021 annual report on the Implementation of the Strategy of the Chamber of Advocates, in the given period, the total number of applications from persons with mental health problems in a psychiatric institution was 160, and 25 out of which were on involuntary placement.[37] This is around 18% of the total number of applications submitted to the court on involuntary placement by the executive bodies of the psychiatric institution in the same period.

According to the findings in the report prepared by the NGOs, the engagement of lawyers is problematic in practice. The study results show that involving a public defender is clearly preserved only by a few psychiatric institutions. This was confirmed by the conversations with people receiving treatment and care.[38] This may also be connected with the lack of awareness among persons subjected to involuntary placement. Furthermore, the 2024 mandatory training programme for lawyers does not include any topic on involuntary placement in a psychiatric institution.[39]

35. Law on Advocacy of the Republic of Armenia, Article 41 (5), available at: https://www.arlis.am/DocumentView.aspx?DocID=186162.

36. EU Fundamental Rights Agency (FRA), "Involuntary placement and involuntary treatment of persons with mental health problems", page 39, available at: https://fra.europa.eu/en/publication/2012/involuntary-placement-and-involuntary-treatment-persons-mental-health-problems.

37. 2021 annual report on the Implementation of the Strategy of the Chamber of Advocates, pages 72 and 76, available at: https://advocates.am/images/khorhrdi_voroshumner/2021hashvetvutyun.pdf.

38. Report on the Institute of Involuntary Placement and Treatment in Armenia, pages 26 and 27, available at: https://hcav.am/hospitalization-17-11-2023/.

39. Mandatory training programme of lawyes, available at: https://www.advocates.am/%D5%A3%D6%80%D5%A1%D5%A4%D5%A1%D6%80%D5%A1%D5%B6/%D5%BE%D5%A5%D6%80%D5%A1%D5%BA%D5%A1%D5%BF%D6%80%D5%A1%D5%BD%D5%BF%D5%B4%D5%A1%D5%B6-%D5%A2%D5%A1%D5%AA%D5%AB%D5%B6.html

In its case law, the Court ruled that it is essential that the person concerned should have access to a court and the opportunity to be heard either in person or, where necessary, through some form of representation. This implies that an individual confined in a psychiatric institution should, unless there are special circumstances, receive legal assistance in the proceedings relating to the continuation, suspension or termination of his confinement. The importance of what is at stake for him - personal liberty - taken together with the very nature of his affliction - diminished mental capacity - compels this conclusion. It is not disputed that the applicant suffered from a mental disability which prevented him from conducting court proceedings and that during the periodic review of his detention, he benefited from the assistance of an officially assigned lawyer. However, as the Court has emphasised on many occasions, assigning counsel does not in itself ensure the effectiveness of the assistance he may afford an accused because an effective legal representation of persons with disabilities requires an enhanced duty of supervision of their legal representatives by the competent domestic courts.[40]

As an example, in *N. v. Romania,* the Court notes that in the great majority of cases, the officially appointed lawyers either advocated the maintenance of the detention or left it to the discretion of the courts. Far from dictating how a lawyer should approach cases in which he or she represents a person suffering from mental disorders, the Court considered that there was a lack of effective assistance throughout the procedures for reviewing the necessity of the applicant's detention. In support of that finding the Court observes that the applicant was represented by a different lawyer for each procedure. Moreover, it considers the applicant's argument, which the Government has not contradicted, concerning the lack of interviews with his various lawyers before the court hearings, which suggests a complete absence of consultation between the applicant and his legal representatives. Regarding the foregoing considerations, the Court concluded that during the procedures implemented with a view to the periodic judicial review of the necessity of his detention, the applicant did not benefit from adequate legal assistance.[41]

It can be concluded from the above-mentioned observations of the Court that the mere appointment of a lawyer is not considered sufficient for the purpose of ensuring proper representation for the person with mental health problems considered for involuntary placement. Meaningful representation is crucial.

40. *Magalhães Pereira v. Portugal* (Application No. 44872/98, judgement 26 February 2002), available at: https://hudoc.echr.coe.int/eng?i=001-60164.
41. *N. v. Romania* (Application No. 59152/08, judgment 28 November 2017), available at: https://hudoc.echr.coe.int/eng?i=001-179207.

Hence, it is recommended to strengthen the efforts to ensure effective and meaningful legal representation/free legal aid for the persons considered for involuntary placement, including through:

- raising awareness on the issue among the personnel of the psychiatric institutions to provide the necessary information to the persons considered for involuntary placement and use other means for ensuring the proper awareness on the right to free legal aid;
- incorporate the topics on involuntary placement in the regular training programme of lawyers, including public defenders.

According to the CPC, if the representative does not participate in the examination of the application for reasons recognised by the court of first instance as unjustified, or the person does not have a representative, then the representative of the guardianship and trusteeship body of the place of residence of that person, and in case the place of residence is unknown, the representative of the guardianship and trusteeship body of the location of the psychiatric institution is mandatory for the examination of the application.[42] Put otherwise, the CPC allows the possibility in exceptional cases to replace the lawyer providing legal aid with the representative of the guardianship and trusteeship body.

It was observed in the "Analysis of domestic legal framework and practice on the restriction of legal capacity of persons with mental health issues: Execution of European Court of Human Rights judgement Nikolyan vs Armenia", that the guardianship and trusteeship commissions operate on a pro bono basis, and they lack sufficient capacity to examine the risks of conflict of interest properly. Furthermore, the supervision and monitoring of guardianship is also not effective. It might be linked to the lack of guidance and capacity-building activities. Though the problem seems deeply rooted, it is not connected with legislative shortcomings. The issue is rather linked to the lack of human and other resources.[43] Hence, due to the lack of capacity, the guardianship and trusteeship bodies is likely not able to ensure a meaningful representation for the person with mental health issues in the frame of the proceedings on involuntary placement.

The issue was highlighted by the NGOs as well. In particular, it was observed that although this requirement of the law is ensured in practice, the participation of the representative of the guardianship and trusteeship body is, as a rule, of a formal nature. First, representatives of guardianship and trusteeship bodies, with a unique exception, do not object to the

42. Civil Procedure Code, Article 269 (4), available at: https://www.arlis.am/DocumentView.aspx?DocID=190625.

43. "*Analysis of domestic legal framework and practice on the restriction of legal capacity of persons with mental health issues: Execution of European Court of Human Rights judgement Nikolyan vs Armenia*", developed in the frame of the "Protection of Human Rights in Biomedicine II" Council of Europe project.

claim of subjecting a person to involuntary treatment. They are also unable to express any position because they do not have information about the living conditions of the residents of their administrative region, etc., and accordingly do not object to the court's decision. Second, often, the representative of the guardianship and trusteeship body of the location of the psychiatric organisations, not the person's place of residence, participates in the hearings. In such cases, the representative of the body cannot present any point of view or information to the court for objective reasons.[44]

Hence, it is urgently necessary to strengthen the capacity of the representatives of the guardianship and trusteeship bodies in the sense of knowledge and skills to ensure meaningful and effective representation for the person with a mental health issue in the cases of involuntary placement, as well as equip them with the necessary means for collecting information about the person of concern.

As an alternative solution, it can be recommended to abolish the regulations giving a possibility to replace the public defender/lawyer by the representative of the guardianship and trusteeship body, excluding the possibility for the representation of the person with a mental health issue in the cases of involuntary placement by the representatives of those bodies.

Notably the CPC allows judges to hold on-site hearings, making the process smoother and speedy.[45] As observed by the NGOs, court hearings in Yerevan are mostly held on-site, sometimes remotely. As the representatives of the psychiatric institutions noted, the remote format causes some problems because the person whose involuntary placement is discussed may not realise that the process is related to him. Hearings in marzes are held at the existing court seat.[46] Considering the difficulty of transferring a person with mental health issues to the court (lack of staff and other resources, threat), this provision was welcomed by the psychiatric institutions, noting that in the vast majority of cases, the judges are applying this measure. Meanwhile, it should be noted with regret that the judges are not entitled to any remuneration for the travel expenses in such cases.

The decision of the first instance court of general jurisdiction on approving or rejecting the application for involuntary placement can be appealed to the Civil Court of Appeal. However, the proceedings at the Civil Court of Appeal and the Court of Cassation do not have any deadline and are

44. Report on the Institute of Involuntary Placement and Treatment in Armenia, pages 25 and 26, available at: https://hcav.am/hospitalization-17-11-2023/.

45. Civil Procedure Code, Article 269 (5), available at: https://www.arlis.am/DocumentView.aspx?DocID=190625.

46. Report on the Institute of Involuntary Placement and Treatment in Armenia, page 25, available at: https://hcav.am/hospitalization-17-11-2023/.

not considered "special proceedings". Hence, the higher courts conduct the examination of appeals and cassation appeals brought against the mentioned judicial acts in a general manner without any peculiarities of the speedy procedure.

The issue was also observed by the HRD, which considered that the mentioned can lead to problematic situations from the point of view of protection of human rights and prevention of ill-treatment because the person against whom a decision was made to undergo involuntary placement continues to remain under the deprivation of liberty and undergo involuntary treatment during the specified period of time. For this reason, it is recommended that a "special procedure" be prescribed for the appeals and cassation appeals with stricter deadlines.[47] The problem was also reported by the NGOs.[48]

Moreover, according to the data provided by the Staff of the Supreme Judicial Council: Judicial Department, in the given period, there were only two cases of appeal against the decisions of the first instance courts in 2021 and 2022. According to the study made by the NGOs, the conversations with the people receiving treatment and care made it clear that either they are not informed about the possibility of appeal or they do not want to appeal because they are aware. "If he appeals, he will be hospitalised longer", or they get an answer. "Until you complain, we will treat you".

It can be assumed that the root causes of the almost lack of appeals against the decisions on approving or rejecting the application for involuntary placement can be connected with the lack of trust towards the speedy procedure, as well as awareness of such a possibility.

Referring to the standards and findings on the need to examine the applications on involuntary placement under a simple and speedy procedure (see paragraphs 30 and 38), it is recommended that strict deadlines be prescribed in the CPC for the appeals and cassation appeals.

It is also suggested that further efforts are made for people whose involuntary placement is being investigated and their representatives to be aware of the possibility of bringing appeals against the decision of the court of first instance of general jurisdiction.

In the frame of the procedure for involuntary placement and safeguards, it is worth discussing the placement of persons deprived of legal capacity. According to the Law on Psychiatric Care and Service, when providing psychiatric care and service (including inpatient) to a child or a person

47. 2023 Annual Report of the Human Rights Defender as the National Preventive Mechanism, pages 29 and 31, available at: https://ombuds.am/images/files/c633369afec7fa8d34d985ee99c2aeaa.pdf.

48. Report on the Institute of Involuntary Placement and Treatment in Armenia, page 29, available at: https://hcav.am/hospitalization-17-11-2023/.

recognised as legally incapable, it is mandatory to record his/her opinion.[49] However, it was reported by the HRD that in the case of not having the same position with the legal representative (when a minor or a person recognised as legally incapable does not want to be in a psychiatric hospital for the purpose of treatment, and the legal representative insists on that), the person's opinion does not have any legal consequences and the person is kept in a psychiatric institution against his will. Hence, in case of disagreement between the person deprived of legal capacity and his/her legal representative, the legislation does not provide for structures for initiating an involuntary treatment procedure, which limits not only the latter's right to be heard but also de facto deprives of liberty, involuntarily placing him/her in the psychiatric institution.[50]

The issue should also be discussed in the frame of the issue of conflict of interest between the person deprived of legal capacity and his/her guardian. According to the Analysis of domestic legal framework and practice on the restriction of legal capacity of persons with mental health issues: Execution of European Court of Human Rights judgement Nikolyan vs Armenia, there is a problem of conflict of interests between the guardian and the person declared legally incapable, which was reported during the interviews and expert discussions.[51] In one of the cases, the HRD recorded that even when a psychiatrist or a psychiatric commission finds that a person no longer needs inpatient treatment, legal representatives still object to the patient's discharge and refuse psychiatric treatment to take the person under their care from the organisations.[52] The issue was raised multiple times during the interviews and it was connected with the lack of vacant places at the psychiatric institutions.

According to the Council of Europe Convention on Human Rights and Biomedicine, where, according to law, an adult does not have the capacity to consent to an intervention because of a mental disability, a disease or for similar reasons, the intervention may only be carried out with the authorisation of his or her representative or an authority or a person or body provided for by law. In the meantime, the individual concerned shall, as far as possible, participate in the authorisation procedure. However, the authorisation may be withdrawn at any time in the best interests of the

49. Law on Psychiatric Care and Service of the Republic of Armenia, Article 17 (5), available at: https://www.arlis.am/DocumentView.aspx?DocID=146066.

50. 2023 Annual Report of the Human Rights Defender as the National Preventive Mechanism, page 20, available at: https://ombuds.am/images/files/c633369afec7fa8d34d985ee99c2aeaa.pdf.

51. "*Analysis of domestic legal framework and practice on the restriction of legal capacity of persons with mental health issues: Execution of European Court of Human Rights judgement Nikolyan vs Armenia*", developed in the frame of the "Protection of Human Rights in Biomedicine II" Council of Europe project.

52. 2023 Annual Report of the Human Rights Defender as the National Preventive Mechanism, page 20, available at: https://ombuds.am/images/files/c633369afec7fa8d34d985ee99c2aeaa.pdf.

person concerned.[53]

According to the Court case law in cases of mandatory confinement, a person of unsound mind must be heard either in person or through a representative. In *Shtukaturov v. Russia*, the applicant, who retained some self-reliance though deprived of legal capacity, could not participate in the proceedings concerning his legal capacity. With regard to the consequences of those proceedings for his personal independence and freedom, the Court ruled that his right to fair proceedings was infringed.[54]

Furthermore, in *Stanev v. Bulgaria,* the Court stated that while recognising that, in some cases, the welfare of a person should be taken into account, the Court insisted that the objective need for accommodation and social assistance must not automatically lead to the imposition of measures involving deprivation of liberty. It also stated that any protective measure should reflect, as far as possible, the wishes of persons capable of expressing their will. Failure to seek their opinion could give rise to situations of abuse and hamper the exercise of the rights of vulnerable persons. Therefore, any measure taken without prior consultation of the interested person will, as a rule, require careful scrutiny.[55] As observed by FRA, the Court acknowledged the lawfulness of the detention under national law, but it concluded that the national legal framework did not provide enough safeguards and was, therefore, in breach of Article 5 (1) of the Convention.[56]

Recommendation Rec (2004)10 of the Ministers to member states Concerning the Protection of the Human Rights and Dignity of Persons with Mental Disorder stipulates that the placement of persons not able to consent in the absence of objection member states should ensure that appropriate provisions exist to protect a person with mental disorder who does not have the capacity to consent and who is considered in need of placement and does not object to the placement. [57]

Pursuant to Recommendation No R (1999)4 on Principles Concerning the Legal Protection of Incapable Adults, in establishing or implementing a measure of protection for an incapable adult, the interests and welfare of

53. Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine, Article 6, available at: https://rm.coe.int/168007cf98.

54. *Shtukaturov v. Russia* (Application No. 44009/05, judgement 27 March 2008), available at: https://hudoc.echr.coe.int/eng?i=001-85611.

55. *Stanev v. Bulgaria*, (Application No. 36760/06, judgement 17 January 2012), available at: https://hudoc.echr.coe.int/eng?i=001-108690.

56. EU Fundamental Rights Agency (FRA), "Legal capacity of persons with intellectual disabilities and persons with mental health problems", page 19, available at: https://fra.europa.eu/en/publication/2012/involuntary-placement-and-involuntary-treatment-persons-mental-health-problems.

57. Recommendation Rec (2004)10 of the Committee of Ministers to member states Concerning the Protection of the Human Rights and Dignity of Persons with Mental Disorder, Article 26, available at: https://rm.coe.int/rec-2004-10-em-e/168066c7e1.

that person should be the paramount consideration. The past and present wishes and feelings of the adult should be ascertained as far as possible and should be taken into account and given due respect. No measure of protection should be established for an incapable adult unless the measure is necessary, taking into account the individual circumstances and the needs of the person concerned. A measure of protection may be established, however, with the full and free consent of the person concerned.[58]

Therefore, it is recommended to initiate legislative amendments by establishing a mandatory requirement to initiate an involuntary placement procedure in the case of a dissenting opinion by the person deprived of legal capacity and legal guardian regarding the inpatient medical examination.

58. Recommendation No R (1999) 4 of the Committee of Ministers to member states on Principles Concerning the Legal Protection of Incapable Adults, available at: https://www.coe.int/t/dg3/healthbioethic/texts_and_documents/Rec(99)4E.pdf.

Procedure for terminating the decision on involuntary placement and safeguards therein

It is of utmost importance that the person subjected to involuntary placement be immediately released once the grounds for it have disappeared. It should be welcomed that the Law on Psychiatric Care and Services stipulate the mechanism of regular revision of the state of mental health of the person subjected to involuntary placement for the purpose of revealing the need for continuing the treatment.
In particular, at least once a month, a doctor-psychiatrist performing involuntary treatment submits an expert opinion about the state of a person with a mental health problem to the Psychiatric Commission to make a decision on continuing or terminating the involuntary treatment of a person. After receiving the expert opinion, within five working days, the Psychiatric Commission examines and gives a conclusion on continuing or terminating the involuntary treatment.[59]

Before the expiration of the six-month period, if the grounds for involuntary treatment of a person with a mental health problem disappear, the executive body of the psychiatric organisations applies to the court with a request to terminate the court's decision on the involuntary placement of the person in a psychiatric institution.[60]

This mechanism was established with the new Law on Psychiatric Care and Services, bringing necessary amendments to the CPC. In particular, pursuant to the CPC, in case the person recovers before the time limit set by the court's decision on involuntary placement upon the application of the psychiatric institution where the person is being treated, based on the conclusion of the Psychiatric Commission, the court makes a decision to cancel the decision on involuntary placement of the citizen.[61]

Statistics provided by the Staff of the Supreme Judicial Council: Judicial Department shows that the norm is practically implemented. As the table below shows, almost all applications for terminating the involuntary placement were approved. Meanwhile, it should also be mentioned that the annual number of applications for terminating involuntary placement submitted to the courts by psychiatric institutions was annually decreased, which can be connected with the decrease in the total number of applications for involuntary placement.

However, according to the information provided by the Staff of the Supreme Judicial Council: Judicial Department, none of the decisions of

59. Law on Psychiatric Care and Service of the Republic of Armenia , Article 24 (3), available at: https://www.arlis.am/DocumentView.aspx?DocID=146066.
60. Ibid. Article 24 (5).
61. Civil Procedure Code, Article 270.1 (1), available at: https://www.arlis.am/DocumentView.aspx?DocID=190625.

the first instance court of general jurisdiction were appealed. In this case, it seems logical since the reason can be the fact that almost all applications for terminating the involuntary placement were granted.

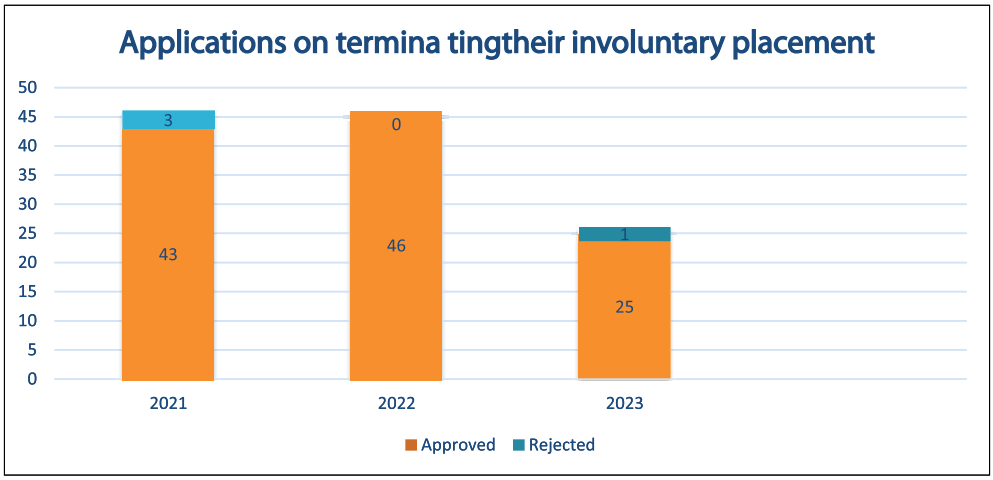

Figure 3

While welcoming the regular review of the state of mental health of the person subjected to involuntary placement for the purpose of assessing the need for further involuntary treatment by different stakeholders based on expert opinion, it should be highlighted that the procedure considers the Psychiatric Commission as the only body who can initiate the procedure before the court. Put otherwise, the person subjected to involuntary placement, his/her representatives, and family members, in the case of a child or person deprived of legal capacity, the legal representative is deprived of access to court for the purpose of terminating the court decision on involuntary placement. Several interlocutors highlighted this as a major issue during the interviews.

Furthermore, as mentioned in the introduction of the current report, Action Plan of the National Strategy on Human Rights Protection 2023-2025 envisaged the review of the legal regulations of the CPC to provide for the person being subjected to involuntary treatment and his/her family members with the right to access to court for the purpose of terminating the decision on involuntary treatment. The issue was also observed by the NGOs, stating that the legislator showed a differentiated approach between the persons who have the right to submit an application for the termination of decisions on involuntary placement. In case of recovery of a person before the time limit set by the court decision on involuntary treatment, the medical organisations has the right to apply to the court to cancel the decision, while the person or his family member does not.[62]

62. Report on the Institute of Involuntary Placement and Treatment in Armenia, page 33, available at: https://hcav.am/hospitalization-17-11-2023/.

According to the Court case law, the forms of judicial review satisfying the requirements of Article 5 (4) may vary from one domain to another and will depend on the type of deprivation of liberty in issue, and it is not the Court's task to enquire into what the most appropriate system in the sphere under examination would be. It is not excluded that a system of automatic periodic review of the lawfulness of detention by a court may ensure compliance with the requirements of Article 5 (4). However, where an automatic review of the lawfulness of detention has been instituted, the decisions on the lawfulness of detention must follow at "reasonable intervals". The rationale underlying the requirements of speediness and periodic judicial review at reasonable intervals within the meaning of Article 5 (4) and the Court case law is that a detainee should not run the risk of remaining in detention long after the time when his deprivation of liberty has become unjustified.[63]

Meanwhile, by virtue of Article 5 (4), a detainee is entitled to apply to a "court" having jurisdiction to "speedily" decide whether or not their deprivation of liberty has become "unlawful" in the light of new factors which have emerged subsequently to the decision on their initial placement in custody (see Ismoilov and Others, cited above, § 146).[64] For example, in the case of *Azimov v. Russia,* the Court found a violation of Article 5 (4), stating that the Court is not persuaded by the Government's argument that the applicant had obtained judicial review of his detention by appealing against the initial detention order issued in the expulsion proceedings. The thrust of the applicant's complaint under Article 5 (4) was not directed against the initial decision on his placement in custody, but rather against his inability to obtain judicial review of his detention after a certain time lapse. Furthermore, the Government did not rely on any provision in domestic law which could have allowed the applicant to do so.[65]

As already noted, in its case law, the Court ruled that it is essential that the person concerned should have access to a court and the opportunity to be heard either in person or, where necessary, through some form of representation in the proceedings related to the continuation, suspension or termination of his confinement. This implies that an individual confined in a psychiatric institution should, unless there are special circumstances, receive legal assistance in the proceedings relating to the continuation, suspension or termination of his confinement. The importance of what is at stake for him - personal liberty - taken together with the very nature of his affliction - diminished mental capacity - compels this conclusion. It

63. *Abdulkhanov v. Russia* (Application No. 14743/11, judgement 2 October 2012), available at: https://hudoc.echr.coe.int/eng?i=001-113287.
64. *Ismoilov and Others v. Russia* (Application No. 2947/06, judgement 24 April 2008), available at: https://hudoc.echr.coe.int/eng?i=001-86086.
65. *Azimov v. Russia* (Application No. 67474/11, judgement 18 April 2013), available at: https://hudoc.echr.coe.int/eng?i=001-118605.

is not disputed that the applicant suffered from a mental disability which prevented him from conducting court proceedings and that during the periodic review of his detention, he benefited from the assistance of an officially assigned lawyer. However, as the Court has emphasised on many occasions, assigning a counsel does not in itself ensure the effectiveness of the assistance he may afford an accused because an effective legal representation of persons with disabilities requires an enhanced duty of supervision of their legal representatives by the competent domestic courts.[66]

Finally, the Court found that a system of periodic review in which the initiative lies solely with the authorities is not sufficient on its own. In particular, in *X. v. Finland,* the Court found that while there had been no problem with the applicant's initial confinement, as it had been ordered by an independent specialised authority following a psychiatric examination and had been subject to judicial review, the safeguards against arbitrariness had been inadequate as regards the continuation of the applicant's involuntary confinement after that period. In particular, there had been no independent psychiatric opinion, as the two doctors who had decided on the prolongation of the confinement were from the hospital where she was detained. In addition, leaving aside the question of whether a period of six months can be considered a reasonable interval or not, it observed that under Finnish law, the applicant herself could not bring proceedings for review of the need for her continued confinement, as such periodic review could only take place at the initiative of the relevant domestic authorities. The procedure prescribed by national law had thus not provided adequate safeguards against arbitrariness. Hence, the Court considered, in light of the above considerations, that the procedure prescribed by national law did not, in the present case, provide adequate safeguards against arbitrariness. The domestic law was thus not in conformity with the requirements imposed by Article 5 (1) (e) of the Convention and, accordingly, there has been a violation of the applicant's rights under that Article in respect of her confinement for involuntary care in a mental hospital after the initial six-month period.[67]

In the meantime, it is noted by the Court that a person of unsound mind who is compulsorily confined in a psychiatric institution for a lengthy period is entitled to take proceedings "at reasonable intervals" to put in issue the lawfulness of his detention.[68] Pursuant to the CPT standards, the subjected to involuntary placement himself should be able to request at

66. *Magalhães Pereira v. Portugal* (Application No. 44872/98, judgement 26 February 2002), available at: https://hudoc.echr.coe.int/eng?i=001-60164.

67. *X. v. Finland,* (Application No. 34806/04, judgement 3 July 2012), available at: https://hudoc.echr.coe.int/eng?i=001-111938.

68. Guide on Article 5 of the European Convention on Human Rights, Right to Liberty and Security (Updated on 29 February 2024), Paragraph 257, available at: https://ks.echr.coe.int/documents/d/echr-ks/guide_art_5_eng.

reasonable intervals that the necessity for placement be considered by a judicial authority.[69]

The possibility of applying for the review of the lawfulness of the involuntary placement for the person subjected to involuntary placement should be preserved. In particular, according to the Recommendation Rec (2004)10 of the Ministers to member states Concerning the Protection of the Human Rights and Dignity of Persons with Mental Disorder, this includes the right to appeal against a decision, to have the lawfulness of the measure, or its continuing application, by the court at reasonable intervals, to be heard in such proceedings.[70]

As in the case of examination of involuntary placement submitted by the executive body of the psychiatric institution, the termination or extension of involuntary placement should consider the expert opinion. Moreover, pursuant to the Recommendation Rec (2004)10 of the Ministers to member states Concerning the Protection of the Human Rights and Dignity of Persons with Mental Disorders the doctor responsible for treatment should be responsible for assessing whether any of the relevant criteria are no longer met unless the court has reserved assessment of the risk of serious harm to others.[71]

It is also essential to ensure access to free legal aid for the persons subjected to involuntary placement for the review and termination procedures. According to the Recommendation Rec (2004)10 of the Ministers to member states Concerning the Protection of the Human Rights and Dignity of Persons with Mental Disorders, member states should consider providing the person with a lawyer.[72]

Meantime, according to the Court case law, the criteria for "lawful detention" under Article 5 (1) (e) entail that the review of lawfulness guaranteed by Article 5 (4) in relation to the continuing detention of a mental health patient should be made by reference to the patient's contemporaneous state of health, including his or her dangerousness, as evidenced by up-to-date medical assessments, and not by reference to past events at the origin of the initial decision to detain.[73]

A study of country-specific examples made by FRA shows the possibility

69. European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Involuntary placement in psychiatric establishments, Extract from the 8th General Report of the CPT, published in 1998, Paragraph 56, available at: https://rm.coe.int/16806cd43e.

70. Recommendation Rec (2004)10 of the Committee of Ministers to member states Concerning the Protection of the Human Rights and Dignity of Persons with Mental Disorder, Article 25 (1), available at: https://rm.coe.int/rec-2004-10-em-e/168066c7e1.

71. Ibid. Article 24 (3).

72. Ibid. Article 25 (3).

73. *W. v. Germany* (Application No. 17167/11, judgement 19 September 2013), available at: https://hudoc.echr.coe.int/eng?i=001-126364.

of the person subjected to involuntary placement initiating the procedure for terminating it. In particular, in a great majority of EU member states, domestic legislation in the area of mental health provides for an appeal against an involuntary placement decision. In Luxembourg, patients can appeal their placement at any time by requesting their release before the district court in the area where the establishment is located. Other interested parties can also petition the court for an appeal. Under Dutch law, a 'patient' may ask a judge (in cases of involuntary placement) or a complaint committee (in cases of involuntary treatment) to end the placement or treatment. The decision of both the judge and the complaint committee may be appealed by the patient to a higher court.[74]

Furthermore, according to the French legal framework, the involuntary placement may be terminated, inter alia, following the request of a family member, the guardian, the curator or any person reporting a relationship with the patient before the admission into care.

According to the UK legal framework, Patients detained under the Mental Health Act can apply to the Tribunal to review their detention. There are specific timeframes within which patients can make these applications, depending on the section of the Act under which they are detained. For example, a patient detained under Section 2 (which allows for detention for up to 28 days for assessment) can apply to the Tribunal within the first 14 days. For longer-term detention under Section 3 (up to six months, renewable), patients can apply once in the first six months and subsequently in each renewal period.[75]

Therefore, it is recommended to prescribe in the relevant regulations of the CPC and the Law on Psychiatric Care and Services the possibility for a person subjected to involuntary placement, his/her representative and guardian to bring proceedings to the court for the termination of involuntary placement "at reasonable intervals".

Furthermore, as in cases of the examination of the application of involuntary placement submitted by the executive body of the psychiatric institution (see paragraphs 22-24), here also, the court decision should consider the expert opinion.

Considering the requirements for access to free legal aid set forth in the frame of cases of the examination of the application of involuntary placement submitted by the executive body of the psychiatric institution

74. EU Fundamental Rights Agency (FRA), "Involuntary placement and involuntary treatment of persons with mental health problems", pages 39 & 40, available at: https://fra.europa.eu/en/publication/2012/involuntary-placement-and-involuntary-treatment-persons-mental-health-problems.

75. "Mental health law: a comparison of compulsory hospital admission in Italy and the UK", available at: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10587399/.

and the recommendations provided thereon, it is proposed to ensure meaningful access to free legal aid in the cases of termination and review of the decision on involuntary placement (see paragraphs 42-49).

In contrast to the examination of the application of involuntary placement by the first instance court of general jurisdiction, domestic legislation does not prescribe any deadlines for the examination of the application on terminating the decision on involuntary placement. This leads to the excessive length of proceedings and the issues of ensuring unified practice. According to the Staff of the Supreme Judicial Council: Judicial Department, the average length in 2021 was 9 days; in 2022, it was 8 days, and in 2023, it was 7 days. However, as per the statistical data provided by the Judicial Department, particularly on the maximum length of the court proceedings on terminating the decision involuntary placement in 2021, 2022 and 2023 were 45, 72 and 40 days accordingly. Though the annual average durations seem adequate, the revision of individual cases revealed that the length varies significantly during the given period.

Year	Maximum length	Minimum length
2021	45	1
2022	72	1
2023	40	1

Figure 4

This means that the person subjected to involuntary placement is not able to be released in the presence of supportive assessment by the psychiatric institution. In the discussed period, there was a case in which the person concerned was deprived of liberty for 70 days after the application from the executive body of the psychiatric institution for terminating the decision of involuntary placement. This is unacceptable and may be considered a violation of human rights.

The issue was observed also by the HRD and NGOs. In particular, according to the findings of the HRD, taking into account the issues on the length of proceedings for the examination of the appeal and cassation appeal cases, as well as the fact that the CPC does not provide for a deadline for the examination of the application to terminate the court's decision to subject a person to involuntary placement in a psychiatric institution, a situation arises, when a person, without the need for inpatient psychiatric care and without medical justification, is actually detained in a psychiatric institution for a long time.[76]

76. 2023 Annual Report of the Human Rights Defender as the National Preventive Mechanism, page 31, available at: https://ombuds.am/images/files/c633369afec7fa8d34d985ee99c2aeaa.pdf.

According to the NGOs, the absence of regulations regarding the examination dates in the case of appeals against judgments is worrying. CPC specifies the terms of the procedure for examining applications for involuntary hospitalisation and treatment of a person in the court of general jurisdiction, but there is no regulation as to what time frames the appeals and cassation appeals submitted in the mentioned cases should be examined. Therefore, the Civil Court of Appeal and the Court of Cassation examine the appeals brought against the decisions made on the applications within the time limits set by the general procedure, and the person continues to remain deprived of liberty and subjected to involuntary placement during the entire period, by the decision of the court.[77]

That is true, that the standard of "speediness" is less stringent when it comes to proceedings before a court of appeal in comparison to the first instance examination (see paragraphs 28-38). Where the original detention order was imposed by a court in a procedure offering appropriate guarantees of due process, the Court is prepared to tolerate longer periods of review in the proceedings before the second instance court. In principle, however, since the liberty of the individual is at stake, the State must ensure that the proceedings are conducted as quickly as possible [78]

Pursuant to the principles under Article 5 (4), persons subjected to compulsory medical treatment are entitled to institute court proceedings to test the lawfulness of their detention, and that access to such proceedings should not depend on the goodwill of the detaining authority. Moreover, the above article guarantees that the judicial decision concerning the lawfulness of detention and, where necessary, ordering the release is taken speedily.[79]

According to the essential principle, involuntary placement should be terminated once the grounds for it are not present any more. This principle is also prescribed in the Recommendation Rec (2004)10 of the Ministers to member states Concerning the Protection of the Human Rights and Dignity of Persons with Mental Disorders.[80] Pursuant to the CPT standards, involuntary placement in a psychiatric establishment should cease as soon as it is no longer required by the patient's mental state.[81]

77. Report on the Institute of Involuntary Placement and Treatment in Armenia, page 29, available at: https://hcav.am/hospitalization-17-11-2023/.

78. Guide on Article 5 of the European Convention on Human Rights, Right to Liberty and Security (Updated on 29 February 2024), Paragraphs 279 & 280, available at: https://ks.echr.coe.int/documents/d/echr-ks/guide_art_5_eng.

79. *Raudenvs v. Latvia* (Application No. 24086/03, judgement 17 December 2013), available at: https://hudoc.echr.coe.int/eng?i=001-139268.

80. Recommendation Rec (2004)10 of the Committee of Ministers to member states Concerning the Protection of the Human Rights and Dignity of Persons with Mental Disorder, Article 24 (1), available at: https://rm.coe.int/rec-2004-10-em-e/168066c7e1.

81. European Committee for the Prevention of Torture and Inhuman or Degrading Treatment

The issue was also highlighted during the interviews and as a way of solution proposing legislative amendments to authorising the Psychiatric Commission to release the person subjected to involuntary placement once the grounds for it are no longer present. In this respect, it should be noted that the wording of the Recommendation Rec (2004)10 of the Committee of Ministers to the member states Concerning the Protection of the Human Rights and Dignity of Persons with Mental Disorders,[82] and there is such a practice in some of the states,[83] the possibility of such a model can be assumed, the Court case law stipulates certain criteria for such a body if it should carry out the review of the decision on involuntary placement.

Pursuant to the Court case law, the "court"[84] to which the detained person has access for the purposes of Article 5 (4) does not have to be a court of law of the classical kind integrated within the standard judicial machinery of the country. It must, however, be a body of "judicial character" offering certain procedural guarantees. Thus the "court" must be independent both of the executive and of the parties to the case.[85]

However, if there is no further necessity for termination of the placement, it will be more in line with the human rights-based approach. Furthermore, considering the issue of the length of proceedings observed above, the model of empowering the Psychiatric Commission to terminate involuntary placement is not recommended. In case of the establishment of such an institute, the relevant regulations of the CPC (Articles 270.1 and 270.2) should be thoroughly revised, and instead/along with the "termination of the decision of the court", the mechanism for "termination of involuntary placement" should be established.

It is of utmost importance to ensure that the Civil Court of Appeal and Court of Cassation examine the application on terminating the decision of involuntary placement submitted by the executive body of the psychiatric institution in a "speedily" manner to escape excessive length of proceedings, potential undue deprivation of liberty, risks of any violation

---

or Punishment (CPT), Involuntary placement in psychiatric establishments, Extract from the 8th General Report of the CPT, published in 1998, Paragraph 56, available at: https://rm.coe.int/16806cd43e.

82. Recommendation Rec (2004)10 of the Committee of Ministers to member states Concerning the Protection of the Human Rights and Dignity of Persons with Mental Disorder, Article 24 (3), available at: https://rm.coe.int/rec-2004-10-em-e/168066c7e1.

83. EU Fundamental Rights Agency (FRA), "Involuntary placement and involuntary treatment of persons with mental health problems", page 38, available at: https://fra.europa.eu/en/publication/2012/involuntary-placement-and-involuntary-treatment-persons-mental-health-problems.

84. The term "court" referred to in Article 5 (4) must be construed as a body which enjoys the same qualities of independence and impartiality as are required of the "tribunal" mentioned in Article 6.

85. Guide on Article 5 of the European Convention on Human Rights, Right to Liberty and Security (Updated on 29 February 2024), Paragraph 251, available at: https://ks.echr.coe.int/documents/d/echr-ks/guide_art_5_eng.

of human rights.

In the frame of the "special proceedings" on involuntary placement prescribed in the CPC, it is recommended to consider stipulating either a strict deadline for delivering the decision or a provision obliging the Civil Court of Appeal and the Court of Cassation to examine the cases on terminating the decision on involuntary placement of the person with mental health issues as a matter of urgency.

Recommendations

Procedure for involuntary placement and safeguards therein

1. Judges should conduct a comprehensive analysis, collecting and covering evidence other than the expert opinion of the psychiatric institution initiating the involuntary placement. This may include a request for alternative expert opinion, study of medical history, questioning community social workers or other relevant persons, etc. Furthermore, developing guiding documents and including the topic of involuntary placement into the regular training programme of judges at the Academy of Justice for judges would be useful.

2. It is of utmost importance to ensure that the courts examine the application on involuntary placement submitted by the executive body of the psychiatric institution in a "speedily" manner to escape excessive length of proceedings, potential undue deprivation of liberty, risks of any violation of human rights as well as ensure clearness and foreseeability for the person of concern.

3. It is recommended to consider stipulating in the CPC (Article 270) either a strict deadline for delivering the decision or a provision obliging the court to examine the cases on involuntary placement of the person with mental health issues as a matter of urgency.

4. Taking into account that the electronic system is relatively new and there might be a lack of awareness and technical shortcomings, it is recommended to ensure regular monitoring of the system and discussions with the executive bodies of psychiatric institutions to further enhance the electronic system, considering their needs as well.

5. It is recommended to strengthen the efforts to ensure effective and meaningful legal representation/free legal aid for the persons considered for involuntary placement, including through:

    - raising awareness on the issue among the personnel of the psychiatric institutions to provide the necessary information to the persons considered for involuntary placement and use other means for ensuring the proper awareness on the right to free legal aid;

    - incorporate the topics on involuntary placement in the regular training programme of lawyers, including public defenders.

6. It is urgently necessary to strengthen the capacity of the

representatives of the guardianship and trusteeship bodies in the sense of knowledge and skills to ensure meaningful and effective representation for the person with a mental health issue in the cases of involuntary placement, as well as equip them with the necessary means for collecting information about the person of concern.

7. It is recommended to abolish the regulations giving a possibility to replace the public defender/lawyer by the representative of the guardianship and trusteeship body, excluding the possibility for the representation of the person with a mental health issue in the cases of involuntary placement by the representatives of those bodies.

8. Referring to the standards and findings on the need to examine the applications on involuntary placement under a simple and speedy procedure (see paragraphs 30 and 38), it is recommended that strict deadlines be prescribed in the CPC for the appeals and cassation appeals.

9. It is also suggested that further efforts are made for people whose involuntary placement is being investigated and their representatives to be aware of the possibility of bringing appeals against the decision of the court of first instance of general jurisdiction.

10. It is recommended to initiate legislative amendments by establishing a mandatory requirement to initiate an involuntary placement procedure in the case of a dissenting opinion by the person deprived of legal capacity and legal guardian regarding the inpatient medical examination.

Procedure for terminating the decision on involuntary placement and safeguards therein

11. It is recommended to prescribe in the relevant regulations of the CPC and the Law on Psychiatric Care and Services the possibility for a person subjected to involuntary placement, his/her representative and guardian to bring proceedings to the court for the termination of involuntary placement "at reasonable intervals".

12. As in cases of the examination of the application of involuntary placement submitted by the executive body of the psychiatric institution (see paragraphs 22-24), here also, the court decision should consider the expert opinion.

13. Considering the requirements for access to free legal aid set forth in the frame of cases of the examination of the application of involuntary placement submitted by the executive body of the

psychiatric institution and the recommendations provided thereon, it is proposed to ensure meaningful access to free legal aid in the cases of termination and review of the decision on involuntary placement (see paragraphs 42-49).

14. If there is no further necessity for termination of the placement, it will be more in line with the human rights-based approach. Furthermore, considering the issue of the length of proceedings observed above, the model of empowering the Psychiatric Commission to terminate involuntary placement is not recommended. In case of the establishment of such an institute, the relevant regulations of the CPC (Articles 270.1 and 270.2) should be thoroughly revised, and instead/along with the "termination of the decision of the court", the mechanism for "termination of involuntary placement" should be established.

15. It is of utmost importance to ensure that the Civil Court of Appeal and Court of Cassation examine the application on terminating the decision of involuntary placement submitted by the executive body of the psychiatric institution in a "speedily" manner to escape excessive length of proceedings, potential undue deprivation of liberty, risks of any violation of human rights.

16. In the frame of the "special proceedings" on involuntary placement prescribed in the CPC, it is recommended to consider stipulating either a strict deadline for delivering the decision or a provision obliging the Civil Court of Appeal and the Court of Cassation to examine the cases on terminating the decision on involuntary placement of the person with mental health issues as a matter of urgency.

ENG

www.coe.int

The Council of Europe is the continent's leading human rights organisation. It comprises 46 member states, including all members of the European Union. All Council of Europe member states have signed up to the European Convention on Human Rights, a treaty designed to protect human rights, democracy and the rule of law. The European Court of Human Rights oversees the implementation of the Convention in the member states.

COUNCIL OF EUROPE

CONSEIL DE L'EUROPE