Reasons and Conditions for Involuntary Hospitalization with Special Emphasis on Detention without Consent of Mentally Disordered Person who Voluntarily Started Hospital Treatment

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SUMMARY
The nature of some mental illness is such that persons affected by their conduct endangering life, health and safety, as well as life, health and safety of others from their surroundings. These persons, because of their mental condition, are often unable to properly assess their own interest. Because of the above it is permitted for these persons, under certain circumstances, to be forcibly hospitalized against their will. However, the problem of involuntary hospitalization of persons with mental disorders remains a controversial and complex ethical and legal problem, because it is characterized by a conflict of opposing interests and moral values. The main reason is the fact that involuntary hospitalization is an act of deprivation of liberty and intervention into the personal integrity, which at that the measure is taken against the individual who has not committed any crime. In order to provide restricted approach to the application of compulsory hospitalization, it is necessary to pass a legislation on the protection of persons with mental disorders that would more closely define the undertaken proceedings, reasons and conditions for involuntary detention and involuntary hospitalization in a psychiatric institution, forced detention of voluntarily hospitalized persons and penal policy violation of this law. It is necessary to initiate the procedure for amending the Law on Contested Procedure, which would reform the procedure for compulsory hospitalization, as an important segment of mentally disordered persons' rights, in order to be in accordance with international and European standards within this field.
Keywords: involuntary hospitalization; psychiatry; law on contested procedure

INTRODUCTION

Persons suffering from mental disorders are not a minor, isolated or neglectable category of population. Mental disorders form a large group of heterogeneous disorders which in different periods of life endanger more than 25% of people in a certain population, regardless of their sex, age, educational or social status, or background, regardless if they are from urban or rural areas.

Consequences of mental disorders expressed in these parameters indicate their damaging economic effects, both for the persons affected and their families and the society as a whole. Therefore, preservation and improvement of mental health have one of priority positions in healthcare and social reality of each country, because investing in mental health is the foundation of social and economic prosperity.

The nature of certain mental disorders is such that, the person with a mental disorder endangers their own life, health and safety as well as the lives, health and safety of others in their surroundings. Due to their mental condition, these persons are often not in the position to adequately assess their own interest. Thus, it is permitted for these people to be, under certain circumstances, involuntarily committed in a healthcare institution without their consent. However, the problem of involuntary hospitalization of people suffering from mental disorders still remains one of controversial and complex ethical and legal problems, because it is characterised by a conflict of opposing moral interests and values [1]. The main reason is the fact that involuntary hospitalization represents an act of taking away freedom and invading personal integrity of the individual, making this measure identical to that undertaken against an individual who has not committed a crime [2]. With regard to social justification of involuntary hospitalization, there are different viewpoints, starting from the opinion that it should be prohibited (supported by drastic examples of its mistreatment) to the viewpoint that involuntary hospitalization is a legitimate device for the protection of the society [3].

Today, involuntary hospitalization is considered an acceptable method of social control of persons with mental disorders, provided it is the only way to protect them, and that certain measures were undertaken before the relevant legal procedures are applied to avoid any mistreatment of the involuntarily committed persons, also providing adequate placement, living

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conditions, treatment, rehabilitation and habilitation, as well as that their rights are respected [4].

Paternal approach in medicine should be avoided in favour of holistic healthcare concept, with the implementation of the protection of the patients' rights [5]. Therefore, conditions have been created for the doctors to understand that involuntary hospitalization is not just a specialistic medical issue and that the doctor should not be the only decisive factor regarding hospital care of mentally ill persons.

Procedure for involuntary hospitalization is a method which is applied when deciding on the involuntary commitment of a mentally ill person in a stationary psychiatric facility; it also involves extension of involuntary hospitalization, as well as bringing decision on discharge of an involuntarily committed person from a psychiatric facility prior to expiry of the term for which the hospitalization measure has been determined [6]. A special form of involuntary commitment in a psychiatric institution is the continuation of the hospital treatment of persons with mental disorders after the consent for medical treatment has been withdrawn, i.e. involuntary continuation of willingly started treatment, which is the main subject of this paper.

Normative framework for involuntary hospitalization is contained in the Constitution of the Republic of Serbia, in the generally accepted rules of international law and approved international agreements. The Constitution of the Republic of Serbia guarantees human rights and foresees general conditions for their limitation. According to the Article 20 of the Constitution of the Republic of Serbia, human rights guaranteed by law may be limited if the limitation is allowed by the Constitution, for the purposes for which the Constitution allows it, in the scope necessary to satisfy the constitutional purpose of limitation in a democratic society and without disruption of the essence of the guaranteed right. When limiting human rights, all state bodies, especially the courts, are obliged to pay attention to the essence of the right being limited, importance of the purpose of limitation, nature and the scope of limitation, relation of limitation to the purpose of limitation and whether there is a way to achieve the purpose of limitation by a lesser limitation of rights.

When it comes to our legislation, the corpus of special regulations on involuntary hospitalization includes the law on healthcare [7], which foresees and regulates basic human rights in the area of healthcare, and the key one, the law on extra-judicial proceedings of the Republic of Serbia from 1982 [8], while some aspects related to involuntary hospitalization are covered by family law, criminal code, etc. In the second section of the law on extra-judicial proceedings, under the title "Commitment in a health organisation which performs activities in the area of neuropsychiatry", the legislator has regulated the reasons and conditions for involuntary hospitalization at a stationary psychiatric institution, as well as the method of action in cases of voluntary and involuntary hospitalization.

Mentally ill persons who are not capable of granting consent may be placed in a psychiatric institution at the request and with a written consent of a member of immediate family or legal representative. A child or a minor may be placed in a psychiatric institution with a written consent of a legal representative. In case the psychiatrist believes that the legal representative is not acting in the best interest of the child, a mentally ill minor, or a person without working capabilities, the health institution is obliged to immediately notify the relevant guardianship body thereof.

Involuntary hospitalization is regulated by having the reasons and conditions defined under which someone may be hospitalized, as well as the procedure itself where the court determines the involuntary hospitalization.

REASONS AND CONDITIONS FOR INVOLUNTARY HOSPITALIZATION

In order for the involuntary hospitalization to be allowed, it is necessary to have legally prescribed reasons and conditions under which this protective measure may be determined. In the provision from Article 45 of the Law on extra-judicial proceedings, it is foreseen that the involuntary hospitalization procedure is undertaken when "due to the nature of disease it is necessary for that person to have limited freedom of movement or interaction with the surrounding world", which indicates that it regulates only the consequences of involuntary hospitalization: "limitation of freedom of movement", or "interaction with external surroundings". Namely, the legislator has not defined which diseases the person who is to be involuntarily committed should suffer from, so the "nature of the disease" can be deducted only from the statement about a person being held at "an organisation which performs activities in the area of neuropsychiatry" [9], which implies that it is the person suffering from a mental disease. At the same time, in the Law on extra-judicial proceedings no reasons have been stated which justify the need to have someone committed or kept at a psychiatric institution. Even when someone is placed at a psychiatric institution, such a person retains the right to "interact" with its surroundings, i.e. the right to communicate with the members of one's family and other people, including the right to correspondence [10].

Taking into account the above mentioned, Article 48 of the Law on health protection from 2005, mandatory commitment, i.e. placement of sick persons in a stationary psychiatric institution without their consent is allowed if a medical doctor, i.e. a specialist of psychiatry or a specialist of neuropsychiatry has estimated that the "nature of the mental disorder of the patient is such that it may endanger the life of the patient or that of other people or endanger property". If this condition is fulfilled, a decision on commitment of the patient for hospital treatment is brought by the consulting body of the stationary institution on the first day following the admittance, and the institution is obliged to notify the relevant court about the admittance within 48 hours after the date of admittance.

According to the international standards, involuntary hospitalization may be prescribed only in two cases: 1) when due to the manifested mental disorder a sick person is endangering one's own life and one's own key existential interests; and 2) when, due to the same reasons, the sick

person is endangering the lives and key existential interests of other subjects [11]. The reason for involuntary hospitalization is not and may not be the so-called "potential hazard" from danger which is related to persons with mental disorders. Namely, it has been scientifically proved and empirically determined that these persons do not pose a greater threat to themselves and their surroundings than the population which is by definition sane, and there are still no validated methods the application of which would enable to reliably foresee future behaviour of a mentally ill person.

Regulation of involuntary hospitalization is motivated by the need to ensure protection of other rights of mentally ill persons as well as the rights of others from their surroundings, such as the right to live, the right to body integrity, the right to safety etc. which they have endangered. At the same time, it may not be assumed that the person, had it been in a condition to reason properly, would likely agree to treatment.

When it comes to involuntary hospitalization, it should be emphasized that there are clear international standards for assessment of its accountability, and by that, its legality. Namely, Article 5 of the European Convention includes the basis for denying freedom to someone, which includes denying freedom to mentally ill persons (Article 5, par. 1 of the European Convention), whereby alcoholics, drug users and vagrants may also be involuntarily hospitalized (the language of the Convention contains terms which have not been used for a long time and which are stigmatising). Related to that, the European law for human rights has established the so-called triple test for its assessment:

- First, it is tested whether prior to involuntary hospitalization it has been determined that a person has a mental disorder, requiring it to be without an exception determined by an "objective medical expertise".
- Second, mental disorder should be "of such a character and such a degree that it justifies involuntary hospitalization" i.e. that involuntary hospitalization should be applied if an individual or public interest may not be protected in any other way. This principle of proportion implies an assessment of existence of proportionality between the means used and the goal one is trying to achieve.
- Third, mental disorder is continued during the entire period of hospitalization.

Therefore, conditions under which a person may be hospitalized must be clearly defined and the law must be precise enough to enable a satisfying degree of legal safety and leave no room for arbitrary decision making.

PROCEDURE OF INVOLUNTARY HOSPITALIZATION

Procedure of involuntary hospitalization is initiated by court, when it receives a notification from a stationary psychiatric institution that an individual has been admitted (brought and kept) without personal consent, i.e. that the committed person has revoked one's own given consent, when it comes to the so-called voluntary commitment. The court is authorised to initiate, upon official authority, the procedure even if it has learned in another way about the individual being admitted and kept at a stationary psychiatric institution without personal consent (Article 48 of the Law on extra-judicial proceedings).

Notification of a stationary psychiatric institution should have a certain, legally prescribed content; data about the person admitted, person who brought him/her and if possible data about the nature and degree of disorder, with appropriate medical documentation whereby it is not foreseen that the notification must contain the reasons why someone should be involuntarily hospitalized.

The notification must be submitted within three days from admittance of a person whose further stay is to be deliberated by the court [12].

Municipal court is in charge of deciding about involuntary hospitalizations i.e. the court of local jurisdiction where the health institution is located.

Procedure is urgent and the principle of urgency is made concrete by prescribing the duty of the court to pass the decision on further commitment of a person in a health organisation "if possible" within 15 days from the date of receipt of the notification, and no later than 30 days, when "determination of the nature of disease" is required (Article 50 of the Law on extra-judicial proceedings). During the involuntary hospitalization procedure, the court should assess whether the person admitted at a psychiatric institution should remain in that institution for a certain period of time, which may not exceed one year (Article 51 of the Law on extra-judicial proceedings).

In order to decide on further commitment, the court must schedule a hearing. The hearing is held, as a rule, at a health organisation. The public is not allowed into the involuntary hospitalization procedure. Prevention of public attendance does not exclude the legal representative of a mentally ill person. The court may allow for the members of the consulting body who have taken part in the decision to commit a mentally sick person without their consent to attend the hearing. The court may also allow for the spouse or a close relative of a mentally ill person to attend only if the latter or his/her legal representative do not oppose that.

The court is obliged to derive evidence by means of expertise and by having the person suspected to be mentally ill examined by at least two doctors of "adequate speciality". The expertise is attended by the judge, except when the expertise is conducted at the health organisation.

In a decision in which it decides on involuntary hospitalization, the court is obliged to order the psychiatric institution to report to the court occasionally about the medical condition, which is anyway its legal duty. Against the decision on involuntary hospitalization a complaint may be filed by the person for whom the procedure is conducted, regardless of the state of the person's mental health. Guardian of that person may also file a complaint i.e. his/her temporary representative. It is legally prescribed that the complaint is filed within three days since the transcript of a decision has been submitted and that it does not have a suspensive effect. The second instance court shall decide on the complaint, and the first instance court is obliged

to immediately submit all the documentation. Deadline for deciding about the complaint is three days with the removal period starting to run from the date of its receipt.

Rules for involuntary hospitalization procedure are also applied in the procedure for extending involuntary hospitalization, which is undertaken when there is a need for an involuntarily hospitalized person to remain at the psychiatric institution after the term defined in the court decision expires. Unlike the involuntary hospitalization procedure which is initiated by the court upon its official authority, the extension procedure may be initiated exclusively by the stationary psychiatric institution where the person is hospitalized, no later than 30 days prior to expiry of the term for which the involuntary hospitalization was defined. In this procedure it is mandatory to present evidence by expertise, as well as to question the involuntarily committed person if the questioning is not detrimental to his/her health.

The law prescribes the possibility to have the involuntarily hospitalized person to be discharged from the stationary psychiatric institution prior to expiry of the term for which the hospitalization was determined. According to Article 52 of the Law on extra-judicial proceedings, the court may also, prior to expiry of the term for which the measure has been determined, decide about the release of the person from the psychiatric institution "if it determines that the health condition of the committed person is improving to such an extent that the reasons for further commitment have ceased to exist". The procedure for discharge of the involuntarily hospitalized person is initiated by the court itself, when it learns from the periodic report of the health organisation that conditions for that have been met or upon a proposal of the committed mentally ill person, his/her legal representative or health institution. The process is attended by the hospitalized person, his/her guardian, spouse, certain relatives and guardianship body.

PROCEDURES FOR INVOLUNTARY COMMITMENT WITHOUT THE CONSENT OF THE VOLUNTARILY COMMITTED PERSON

A mentally ill person placed at a psychiatric institution with his/her consent, who later recalls the consent, but when in the meantime reasons occur which are consistent with reasons for commitment without the consent is subjected to the same procedure as the person with mental disorder who is committed without consent.

A term of 48 hours for submission of notification on commitment without consent of a mentally ill person and medical documentation to the court shall start to be valid from the date the consent is recalled.

Procedure of involuntary hospitalization of mentally ill persons who have recalled their consent to psychiatric hospital treatment represents one of the greatest challenges in the protection of patients' rights, which hides many more controversial dilemmas than the ones related to the procedure of involuntary hospitalization.

Taking into consideration several other systemic shortcomings of the present norms, it is necessary for the Law on protection of people with mental disorders to foresee, in case of involuntary commitment of willingly committed persons, a more precise definition of both the process and the subject's taking part in the extension of involuntary commitment to hospital treatment.

With involuntary commitment of a willingly committed person the terms until the court's decision is legally valid are more important than the initial involuntary commitment. Namely, in the European Union countries, terms for decision making upon a motion for involuntary hospitalization are 4-6 weeks, and in our country approximately 45 days, at best, whereby the right to a trial in a reasonable deadline is compromised [Article 32 par.1 of the Constitution of the Republic of Serbia and Article 6 of the European Convention], considering that in this procedure the decision is made on the limitation of the basic human right, the right to freedom, since the person is to be denied freedom until the decision on involuntary hospitalization becomes legally valid.

FINAL OBSERVATIONS

The nature of certain mental disorders is such that, with their behaviour, the sick endanger their own lives, health and safety as well as lives, health and safety of others in their surroundings. Due to their mental condition, these people are often not in the position to adequately assess their own interest [13, 14, 15]. Therefore, it is allowed for such persons to be, under certain circumstances, involuntarily committed into a health institution without their consent.

Today involuntary hospitalization is considered an acceptable method of social control of persons with mental disorders, provided it is the only way to protect them, and that certain measures have been undertaken before the relevant court instances which have removed all possibility of mistreatment and other arbitration, that the persons committed involuntarily have been provided with adequate placement, living conditions and treatment, rehabilitation and habilitation, as well as that their rights are respected [9, 16-19]. In order to ensure a restrictive approach in applying the involuntary hospitalization procedure it is necessary to adopt the Law on protection of people with mental disorders, which would more closely define initiation of a procedure, reasons and conditions for involuntary commitment and involuntary placement in a psychiatric facility, involuntary commitment of willingly placed persons and penal policy for breach of provisions of this law.

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Разлози и услови за присилну хоспитализацију с посебним освртом на задржавање без пристанка особе са душевним поремећајем која је добровољно започела болничко лечење

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КРАТАК САДРЖАЈ

Природа појединих душевних болести је таква да оболеле особе могу својим понашањем угрозити сопствени живот, сопствено здравље и безбедност, али и живот, здравље и безбедност других особа из свог окружења. Ова лица, због свог душевног стања, често не могу да правилно процене сопствени интерес, па је зато допуштено да се, под одређеним околностима, мимо њихове воље сместе у здравствену установу. Међутим, присилна хоспитализација особа са душевним сметњама остаје и даље један од спорних и сложених етичких и правних проблема, јер га одликује конфликт супротних моралних интереса и вредности. Основни разлог је у чињеници да присилна хоспитализација представља чин одузимања слободе и уплив у лични интегритет појединца, при чему се ова мера предузима према појединцу који није извршио било какво кривично дело. Ради обезбеђивања рестриктивног приступа код примене поступка присилне хоспитализације, неопходно је донети закон о заштити лица са душевним сметњама, којим би се ближе дефинисали покретање поступка, разлози и услови за присилно задржавање у психијатријској установи и за присилни смештај у њој, присилно задржавање добровољно смештених лица и казнена политика за кршење одредаба овог закона. Нужно је покренути поступак за измене Закона о ванпарничном поступку којим би се поступак за принудну хоспитализацију, као важан сегмент заштите људских права лица са душевним сметњама, реформисао и ускладио с међународним и европским стандардима у овој области.

Кључне речи: присилна хоспитализација; психијатрија; Закон о ванпарничном поступку