

# Involuntary placement and involuntary treatment of persons with mental health problems

*Article 3 (right to integrity of the person), Article 4 (prohibition of torture and inhuman or degrading treatment or punishment), Article 6 (right to liberty and security), Article 7 (respect for private and family life), Article 21 (non-discrimination), Article 26 (integration of persons with disabilities) and Article 35 (healthcare) of the Charter of Fundamental Rights of the European Union guarantee several rights and principles in relation to involuntary placement and involuntary treatment.*

## Policy context

Mental health problems are experienced by about one in 10 European Union (EU) citizens. Many seek help voluntarily, but some may be placed in institutions or treated without their consent. This might affect their fundamental rights. The EU Charter of Fundamental Rights applies only in the area of Union law and when EU Member States implement Union law. The issue of involuntary placement and involuntary treatment belongs to an area of complementary competences between the EU and its Member States. Amid the broader reassessment of the rights of persons with mental health problems, the processes of involuntary placement and involuntary treatment are two issues of core concern.

In 2006, the European Parliament passed a resolution on improving the mental health of the population which states that “the use of force is counter productive, as is compulsory medication” and that “all forms of in-patient care and compulsory medication should be of limited duration and should, where possible, be regularly reviewed and subject to the patient’s consent”. It also takes the view that “any restriction of personal freedoms should be avoided, with particular reference to physical containment”.

*“Compulsory placement of patients in psychiatric institutions and involuntary treatment affects severely their rights. It should only be applied as a last resort, where less restrictive alternatives have failed.”*

*European Commission (2005), Improving the mental health of the population*

In June 2011, the Council of the EU reviewed the implementation of the European Pact for mental health and well-being, launched in 2008, and invited EU Member States, to “[...] make mental health and well-being a priority of their health policies and to develop strategies and/or action plans on mental health including depression and suicide prevention; [...] promote, where possible and relevant, community-based, socially inclusive treatment and care models; [...] take measures against the stigmatisation and exclusion of and discrimination against people with mental health problems”.

## Legal framework

International and national laws and policies set out a range of norms and safeguards on the involuntary placement and involuntary treatment of persons with disabilities. In 2004, the Council of Europe Committee of Ministers adopted a non-binding Recommendation on the rights of persons with mental health problems. It lays out safeguards that should be upheld before a decision can be taken on involuntary placement or involuntary treatment.

The entry into force of the United Nations (UN) Convention on the Rights of Persons with Disabilities (CRPD) has prompted discussions about the current legal framework governing involuntary placement and involuntary treatment. The rights-based approach to disability embodied by the CRPD has significant implications for the EU and those Member States that have ratified the convention.

The EU ratified the CRPD in December 2010, while, as of March 2012, 20 EU Member States have ratified the convention. Its requirements pose potential challenges for existing legislation and have a bearing on the way the needs of persons with disabilities are met, although recent reforms have taken the convention’s guarantees into consideration.

Laws on involuntary placement and involuntary treatment are diverse across the EU Member States. All specify, however, minimum criteria that must be fulfilled for involuntary placement or involuntary treatment to be lawful. They also give people who have been involuntarily placed the right to appeal

against the decision and to have their placement reviewed by a court. Many EU Member States have recently reformed or are in the process of reforming their legal frameworks in this area.

## FRA's work

Following its creation in 2007, the FRA began its work on the rights of persons with disabilities focusing on the fundamental rights of some of the most vulnerable groups of persons with disabilities, namely those with intellectual disabilities and those with mental health problems.

In this context, the FRA carried out a legal analysis of international and national standards on the involuntary placement and involuntary treatment of persons with mental health problems. This analysis is supplemented with findings from interview-based research with a limited number of persons with mental health problems recounting their past experiences. This research was conducted in Bulgaria, France, Germany, Greece, Hungary, Latvia, Romania, Sweden and the United Kingdom.

## Key standards

### United Nations

The CRPD takes a disability-neutral approach to involuntary placement. It specifically delinks the deprivation of liberty from the existence of a disability, so compulsory placement on the basis of a disability would be contrary to the CRPD and in itself discriminatory. Further interpretation of the CRPD is needed to clarify the extent to which involuntary treatment is compatible with the convention's norms.

### Council of Europe

Council of Europe standards and the European Court of Human Rights case law allow persons with mental health problems to be involuntarily placed or treated in certain circumstances, such as a significant risk of serious self-harm, only if strict safeguards are met. The process of compulsory placement or treatment must follow established procedural safeguards, and a court or another independent body must review its lawfulness.

*"Any restrictions of the rights of the individual must be tailor-made to the individual's needs, be genuinely justified and be the result of rights-based procedures and combined with effective safeguards."*

Thomas Hammarberg, Council of Europe Commissioner for Human Rights, Viewpoint, 21 September 2009

## Personal experiences

Respondents with mental health problems recounted largely negative experiences of their involuntary placement or treatment. While the circumstances surrounding compulsory measures vary considerably, the trauma, fear and lack of dignity associated with involuntary placement or involuntary treatment were recurrent themes.

*"No one said anything to me about where I was or why I was there, I did not know a thing. I spent a whole year in that hospital."* (Woman, 47)

Respondents also spoke of the lack of control they experienced. Few of them had been consulted or were listened to before being involuntarily placed or treated.

*"When they give you medication, no one tells you exactly what it is. They give you four or five pills. No one explains anything."* (Man, 47)

Furthermore, few respondents seemed to be aware of their rights when they were being forcibly detained.

Where admissions were voluntary and individuals had clear choice and control over their treatment their experiences were positive.

*"I've got a wonderful clinic, I can turn up straight away in a crisis and I feel very comfortable there."* (Woman, 50)

## Evidence-based advice

These findings provide important evidence that the EU and Member States can take into account when addressing involuntary placement and involuntary treatment challenges stemming from their CRPD obligations.

By offering comparable information on the current situation, the research contributes to discussions on the way ahead and how to reform existing legal frameworks nationally. This will ensure that evidence gained from the interviews with persons with mental health problems is considered during decision making.

### Further information:

An overview of FRA activities on disability is available at: [http://fra.europa.eu/fraWebsite/disability/disability\\_en.htm](http://fra.europa.eu/fraWebsite/disability/disability_en.htm)

The report on *Involuntary placement and involuntary treatment of persons with mental health problems* is available at: [http://fra.europa.eu/fraWebsite/research/publications/publications\\_en.htm](http://fra.europa.eu/fraWebsite/research/publications/publications_en.htm)

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