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Compulsory psychiatric admission

A comparison of English and Belgian legislation

Case history

Y is a 55-year-old woman who was brought to the accident and emergency department, following an epileptic fit on the street. She had a known history of severe alcohol dependency and epilepsy. She had numerous past admissions, which were always terminated prematurely by her. She has not been adhering to the anti-epileptic treatment. Five days prior to admission her daughter found her in a grossly self-neglected state. There was evidence of recent heavy drinking and she had been incontinent of urine and faeces. Despite this the daughter had not requested help. At interview Y presented as a small unkempt lady, seemingly undernourished and frail. She had recently undergone a hip replacement and was found to have an infected suture wound on physical examination. There were no signs of acute confusion or intoxication. She was neither depressed, nor deluded. There were early signs of cognitive decline (short-term memory impairment). She refused voluntary psychiatric treatment and denied her self-neglect, in spite of her bad personal hygiene and infected wound.

The Belgian procedure

Criteria for compulsory psychiatric admission

When a patient refuses voluntary treatment and is regarded as risking either his or her own health and/or safety or the health or safety of others, compulsory psychiatric admission can be considered. Because of the risk to self or others, the patient is considered likely to be mentally ill. No definition of mental illness is given, but the Belgian law does mention a negative definition of mental illness. That is, maladjustment to moral, social, religious, political or other values must not be regarded as mentally disordered (Nys, 1993a).

The arguments that Y's behaviour was endangering her health were as follows. Her wound was infected and would lead to a toxic state if not treated adequately. She continued to drink, but denied it, and would probably have further seizures. There were also signs of early cognitive decline.

She was assessed as a danger towards others, because she had almost caused a traffic accident through the epileptic fit and had not been adherent with her treatment to control the epilepsy.

Urgent or non-urgent procedure

To describe the Belgian procedure, an understanding of the distinction between the non-urgent and urgent procedure is essential. The non-urgent procedure is used in approximately 25% of the cases whereas the urgent procedure is applied to approximately 75% of the indications for formal treatment (Nys, 1993*a*).

For the non-urgent procedure an application and a medical recommendation (not older than 15 days) are needed (Nys, 1993*b*). The application can be made by any person who is considered a concerned party, with the exception of any financial interests. They could be a family member, a general practitioner (GP), a neighbour, a social worker or even the patient, who writes the application. The reasons for the application must be clearly stated. The medical report can be made by any doctor who has examined the patient and who is not in any way personally related to the patient or the applicant. The doctor should neither be attached to the hospital where the patient already stays voluntarily (if the patient is already in hospital) nor to the admitting hospital. There is no extra qualification needed in order to be allowed to write the report, however, the majority of recommendations are written by psychiatrists. It is not strictly forbidden for a GP to write this report, but it is not recommended. The report should mention why other treatments are inappropriate (most commonly because the patient refuses voluntary treatment). Both the application and the report are sent to the Justice of the Peace, whose function is comparable with the English Magistrate of a County Court. The Justice of the Peace will then visit the patient, at home or in the hospital, together with a lawyer and a psychiatrist, both theoretically chosen by the patient, and a confidant. If the patient does not want to (or cannot) choose a psychiatrist, the Justice of the Peace appoints one, as he or she can appoint a lawyer for the same reasons. In less than 10 days a decision is taken by the

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Justice of the Peace. The period of assessment can last up to 40 days.

For the urgent procedure, the main difference lies with the involvement of the *Procureur Des Konings* (comparable to the UK Attorney of Law). It is his or her deputy who will be contacted by the doctor who has decided formal treatment should be considered urgently. Based on this recommendation, which only differs from the form for the non-urgent procedure in so far as an explanation for urgency is added, an immediate decision is made by the deputy of the *Procureur Des Konings*. There is a 24-hour on-call system. The deputy will either decide to detain the patient, or decide there is no reason for urgent detention. In the case of detention, he or she will also decide what hospital the patient should be sent to. As with the non-urgent procedure, an official request for detention is needed, but the deputy of the *Procureur* can act as the requester as well. This is mostly the case, thereby omitting the need for an external application, which saves time in the case of urgency. The medical assessment, followed by the initial decision of the deputy of the *Procureur* can theoretically be finished in one hour. By then the patient will be sent to the psychiatric hospital.

In less than 24 hours the request and recommendation are sent to the Justice of the Peace, who will visit the patient in the psychiatric hospital in less than 10 days. The rest of the procedure is not different from the non-urgent procedure, as described above (Nys, 1993*a*).

In the case of Y, described above, it was decided there were no reasons for the urgent procedure for formal psychiatric treatment, but the non-urgent procedure was regarded as an appropriate way to institute an alcohol treatment programme. The application was made by the social worker of the accident and emergency department. Under consultant supervision the medical recommendation was completed by the junior doctor.

Duration of the assessment

When the non-urgent procedure is followed, formal admission leads to a period of formal in-patient assessment for a maximum of 40 days. If, after the initial 40 days, further psychiatric input is needed, and the patient refuses to undergo this voluntarily, a request for prolongation is made by the medical director of the psychiatric hospital where the patient is staying.

After the Justice of the Peace has received this request, he or she revisits the patient and decides if further detention is granted or not. Prolongation is possible for a period of up to two years. When that period is over, further prolongation for another two years can be considered.

As a non-urgent procedure was chosen in the case of Y, both the application and the medical report were sent to the Justice of the Peace. He visited the patient at home, four days later. His decision to confirm the request for formal treatment in a psychiatric hospital, was based on the application from the social worker, the medical report, the opinion of a psychiatrist and the defence lawyer. Both the lawyer and the psychiatrist were chosen by the Justice of the Peace. The concern of the family was taken into account as well.

The patient's rights and appeal

In Belgium an appeal is sent to the District Court, which is the second level of the Civil Law Court. A decision is made before the 30th day after the appeal.

The decision made by the Justice of the Peace can be overruled by the medical director of the psychiatric hospital, when he or she decides further formal treatment is not necessary. He or she might decide that formal treatment in the community (for a maximum of one year) is appropriate. The patient is then expected to follow the rules set by his or her doctor. If he or she does not comply, he or she can be taken into hospital at any time. This community treatment order is rarely used in practice.

Discussion

There are clear differences in roles and rules between the Belgian and English procedure of compulsory psychiatric admission.

Roles

Judicial authority The involvement of a judicial authority in the Belgian procedure is the major difference with the UK legislation. Although the medical professional usually initiates the procedure, his or her role is an advisory one. The deputy of the *Procureur des Konings* takes the initial and the Justice of the Peace the final decision. The judicial authority is regarded as protector of the patient's rights.

The GP and the psychiatrist In Belgium the GP is not encouraged to get involved, although it is not forbidden for him or her to initiate the procedure and/or write a report. The main reasons are subjectivity, a risk of breach of confidentiality (if he or she uses information gathered from his or her previous contacts with the patient) and the need to preserve the doctor–patient relationship (Nys, 1993*a*). In contrast with this, GPs in the UK are regularly expected to complete the second recommendation because they provide background information and have knowledge of the patient's resources.

In contrast with the English system, where the recommending doctor needs to be 'Section 12 approved', no special training is needed to allow a doctor to recommend a Section in Belgium.

Nurses Belgian legislation does not mention a nurse's holding power, nor does a Section 5(2) exist. When a patient wants to discharge him- or herself and this is regarded as inappropriate, the medical officer or nurse who decides to prevent the patient from leaving before the procedure for formal detention has been completed, will be protected by the law which regards the refusal of "helping a person in need" as a criminal act. The same applies to the doctor who decides to sedate a patient against his or her will, if no such treatment would lead to

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a dangerous situation for either the patient or others (Nys, 1993*a*).

Social worker The Belgian system does not provide a specific role for the social worker. He or she can make an application, but, as mentioned above, this could be done by almost anyone who is a concerned party.

Rules

In spite of the title of the Belgian law ('Treatment in a hospital'), no guidelines or rules concerning the actual treatment are set. It is considered as the doctor's expertise to decide what treatment is appropriate. Theoretically, a patient can, once detained, refuse any treatment. In contrast with UK legislation, the law does not mention any rules regarding obligatory electroconvulsive therapy treatment.

The English legislation tries to make the distinction between mental disorder/mental illness/mental impairment and psychopathic disorder (Bluglass, 1983), but this is not the case under Belgian law. The definition of these terms is avoided by linking the notion of danger (towards the patient and/or others) to the likelihood of a mental illness. The first 40 days are meant to be a period of observation, during which the real nature of a possible mental illness should become clear. This is comparable with the UK Section 2/3 division, with a Section 2 being regarded as an admission for assessment (28 days) and a Section 3 as a procedure for obligatory treatment (six months) (Bluglass, 1983).

Comments

The major difference between the English and the Belgian Mental Health legislation, is the involvement of the judicial authority in Belgium. This theoretically places the doctor in a different role; more advisory than decisive. A law which orders an immediate judicial hearing successfully protects the patient's rights, but the English legislation has tried to surmount this obstacle by having the approved social worker representing the rights of the patient and by creating mental health tribunals.

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