MENTAL HEALTH LAW PROFILE

Mental health law in Hungary

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There is no separate mental health act in Hungary and there has never been one. This paper gives some historical background and then summarises the legislation that relates to mental health.

History

In Hungary, Act XIV of 1876 on the restructuring of public health first addressed the issue of psychiatric patient care as a health and social services issue. This act stipulated that persons with mental disorders had to be placed in government-run asylums for the insane for medical treatment and care if they posed a public threat. The care of persons with incurable mental conditions who did not pose a threat to the public and had no personal wealth had to be financed by any relatives responsible for their care. If they had no such relatives, the relevant residential communities were required by law to provide social care for those patients.

Subsequently, the care given to psychiatric patients was regulated by decree-law 12 of 1966 on the medical treatment and care of persons with mental disorders, as well as decree 5 of the same year (X.1) of the Ministry of Health, which implemented statutory rule 12 of 1966 on the medical treatment and care of persons with mental disorders.

Separate rules applied to 'alcoholics', for example decree-law 41 of 1982 on the compulsory institutional treatment of alcoholics. In fact, regulations pertaining to alcoholics were significantly more extensive than the regulations pertaining to psychiatric patients. Similarly, psychiatric patients who committed criminal acts were the subject of more extensive regulation than non-forensic patients.

Act II of 1972 was the first act on healthcare under the socialist regime. Pursuant to this act, a medical board made a decision regarding compulsory treatment, the lawfulness of which was reviewed by a court. However, the head of the psychiatric department was entitled to place persons with mental disorders with a family who provided care for the patient and, if it became necessary, to transfer the patient back from the family to an institution. The 1972 act was replaced by the Healthcare Act of 1997, which is considerably more modern in its approach.

Mental health in current health law

The medical care of psychiatric patients is discussed only in chapter X of Act CLIV (on healthcare) of 1997 (Healthcare Act), but even it devotes merely 12 articles, 192 lines, to the issue. Chapter X sets out special rules (*lex specialis*) in respect of psychiatric patients and institutions. Consequently, the provisions described in the other chapters of the act apply also to the medical care of psychiatric patients, as general rules, while, in the specified circumstances, the provisions of chapter X on psychiatry must be applied. The majority of these special provisions relate to medical treatment in a psychiatric facility, restrictive measures, certain patient rights and the judicial review of admittance to an institution (Vizi, 2011). Only one implementing regulation, decree (VII.6) of the Ministry of Health, Welfare and Family, was issued in relation to the act. This concerns the rules for the admission of psychiatric patients to an institution and the restrictions that may apply to care.

Act III of 1993, on social governance and social welfare, regulates the social assistance given to psychiatric patients, and decree 1/2000 (I.7) of the Ministry of Health, Welfare and Family on the professional tasks and the conditions of operation of social welfare institutions that provide personal care stipulates detailed rules. In Hungary, in addition to the service provided by transitional institutions (legally defined bodies such as nursing homes and shelters for homeless people, as well as accommodation for people with drug problems and psychiatric patients), community psychiatric care is also considered a social welfare service (Vizi & Ilku, 2005). The core issues in Hungarian community psychiatric care include the lack of sufficiently detailed regulations and the lack of sufficient links between medical and social care (Maj & Kurimay, 2010).

How mental disorder is defined by law

The Healthcare Act defines a psychiatric patient as someone who is diagnosed as having a mental or behavioural disorder (F00–F99) or who is at risk of self-harm (X60–X84), as set out in ICD-10. This definition, however, applies only within healthcare legislation. In other legal areas, including the Criminal Code and the Civil Code, the legislation uses outmoded phrases, some of which stigmatise patients, such as 'imbecility' and 'mental degradation'. These phrases are not defined in legislation.

Grounds for compulsion

Pursuant to the Healthcare Act, the rights of psychiatric patients – with respect to the healthcare services they receive – may be restricted only in cases where they exhibit 'dangerous or immediately dangerous behaviour to his own or others' life, physical well-being, or health'. In this respect, intoxicated psychiatric patients (persons under the influence of drugs or alcohol) present a growing

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problem because their behaviour (conduct) under the effect of a chemical substance often poses a risk. If the police find more than a 'negligible' quantity of drugs, as specified in the Criminal Code, on a person, the possession of the drug is considered a criminal act. The new Criminal Code (due to take effect in 2014) will make the possession of even a negligible quantity of drugs a criminal offence.

In respect of patients who are presumed to be responsible for their actions (i.e. who have mental capacity), the general rules of the Healthcare Act apply to the right to refuse psychiatric treatment, with the provision that only those treatments may be used without the patient's consent that serve to prevent conduct that poses a threat. Normally, the general rules of the Healthcare Act also apply to the rights of psychiatric care providers. They have special rights only in respect of the prevention of conduct that poses a threat, access to healthcare records and preventing patients who are treated against their will from leaving the facility (Vizi & Ilku, 2005; Vizi, 2011).

Protecting the public and protecting the human rights of people with mental disorder

If compulsory measures are enforced against a patient, the guardian of the patient (generally a family member) or a relative if the patient is not under guardianship or a person designated by the relative must be immediately notified, in addition to the patients' rights representative. If patients cannot assume complete responsibility for their actions, the guardian and/or the surrogate decision makers – usually relatives – will be entitled to appeal under the law (Vizi & Ilku, 2005).

If the court review determines that the admission of the patient was not lawful or the treatment in a facility was not justified, it orders the release of the patient. The patient – if he or she does not wish to receive voluntary treatment – must be discharged from the facility if continued institutional treatment is no longer justified. The patient's doctor will make this decision.

A complaint may be filed with the head of the institution, the patient's rights representative, the National Public Health and Medical Officers' Service, the ethics committees of the Medical Chamber and the court. There are also other procedures that are applied less frequently.

There is no time limit for the detention. A court review takes place every 30 days.

Currently, there is no effective legal framework for out-patient and compulsory treatment in the community. However, Hungarian law acknowledges the concept of so-called detention ('re-routing'/diversion) in the case of patients who are addicted to drugs and who commit a drug-related minor criminal act punishable by less than 2 years' imprisonment. However, drug-related activity without addiction (e.g. drug trafficking) does not qualify (opinion 57/2007 of the Criminal Board of the Supreme Court – *Court Resolutions*, 2008).

In terms of patient rights, Hungary follows international norms and directives from the European Union (EU). The few legal violations in general arise as a consequence of inadequate resources, namely the low numbers of nurses and therapists (Kurimay, 2010).

The treatment of high-risk and violent patients, their legal regulation and forensic management remain problematic. Hungary has no so-called high-security hospitals or secure units, nor does it have forensic services outside of the penal system. The profession has proposed concrete plans for the introduction of both types of institution, but as yet no decision has been taken (Kurimay, 2010; Vizi, 2010).

Discussion

In our view, the current Healthcare Act, which regulates the rights of the public and the rights of people with mental disorders, has several gaps which in practice lead to legal uncertainty, primarily in respect of the admission and the treatment of patients without their consent. We believe that it is necessary to draft a dedicated Mental Health Act (Bitter & Kurimay, 2012).

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