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Mental health law profiles

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Germany and Russia are giants of European civilisation (Figes, 2002; Watson, 2010). In the world of arts and letters the names of Beethoven and Goethe, Tchaikovsky and Dostoyevsky have universal appeal. Many others could be included. In the history of psychiatry, Kraepelin and Pavlov stand at the very foundations of modern psychopathology. Yet when one looks in these countries' histories, one also finds grave offences against those who are mentally ill and against psychiatry. Though this is far from particular to these countries, some of the offences that occurred there have unique significance for our professionalism (Ikkos, 2010).

After the First World War, in the midst of a universal economic crisis and in the context of humiliation and destitution resulting from the harsh insistence by victorious allies on the payment of reparations by defeated Germany, the psychiatrist and pathologist Alfred Hoche was instrumental in developing the ideology of 'life unworthy of life', which led to the designation of people with a mental illness or intellectual disability as 'useless eaters'. Starting in hospitals with the killing by paediatricians of children with severe disabilities in Leipzig in the early 1930s and supported by the gross practice of collaborating psychiatrists signing certificates condemning people with mental

illness, intellectual disability and epilepsy to the gas chambers, this ultimately led to the systematic extermination of 100 000 psychiatric patients in specially designated 'hospitals' in the early 1940s. The Nazi Holocaust started with people with an intellectual disability or mental illness (Friedlander, 1995) and the German psychiatric profession has apologised since.

In Russia, during the Soviet era, the offence was the use of psychiatry against political dissidents, rather than against people with a mental illness (Musto, 2009). Through the unfounded invention of 'sluggish schizophrenia' by the Soviet psychiatrist Andrei Snezhnevsky, political dissidents were detained as mentally ill and subjected to systematic torture through 'psychiatric treatment' such as electroconvulsive therapy and insulin infusions. Victims included psychiatrists, such as the brave dissident Anatoly Koryagin, who questioned the legitimacy of such practices and other injustices.

This history reminds us why the scientific grounding and ethical integrity of psychiatric diagnostic systems and of practising psychiatrists, conventions on human rights, mental health law and just health and social policies are of such importance for both our patients and the profession. On the evidence of the two papers presented here,

in different ways, both Germany and Russia have made much progress in erecting legal safeguards. However, the risks to our patients remain universal and ever-present in practice (Robertson & Walter, 2010; Bark, 2014; Mendes dos Santos *et al.*, 2014; van Voren, 2014).

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Mental health law in Germany

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There is no national mental health law in Germany: the 16 German states are responsible for legislation concerning forced admissions, while the German Civil Code covers non-acute care, in particular for those not able to care for themselves. In forensic psychiatry, both federal and state laws apply. This article describes this situation and provides figures about detentions and other aspects of mental health law in Germany.

Relevant historical issues

Mental healthcare institutions developed in Germany in the late 19th century. Since the development of the 'welfare state' in the early 20th century, mental healthcare has been covered by health insurance, or the state for those who are not insured, although restrictions apply for some special services such as psychotherapy. The National Socialist era (1933–45) saw the forced sterilisation of people with a mental illness and the nationwide euthanasia programme ('T4 action'). After 1945, restructuring led to a strengthening of the German federal states and a weakening of the central legislature. The states became responsible for mental health legislation (*Psychisch Kranke-Gesetze*, abbreviated to PsychKG), other than:

- under the Federal Penal Code, or *Strafgesetzbuch* (StGB), detention following a criminal conviction, leading to forensic psychiatric care
- under the Federal Civil Code, or *Bürgerliches Gesetzbuch* (BGB), detention to avoid imminent self-harm due to a mental disorder.

With German reunification in 1990, the West German mental health regulations were introduced in the East German states and each of the former East German states introduced its own PsychKG. A recent update on the general developments in German mental healthcare and increasing mental healthcare utilisation was provided by Gaebel & Zielasek (2012).

Legislation controlling detention in hospitals and grounds for detention

There are three routes to involuntary detention in hospital due to a mental disorder.

- A court may determine that a person with a mental disorder or a substance misuse disorder found guilty of a crime (under the auspices of the Federal Penal Code) will be admitted to a forensic psychiatric treatment unit rather than sent to prison. Normally, such rulings are based on expert testimonies by psychiatrists. Mental healthcare for forensic psychiatric units is governed by state-specific laws. Detention usually lasts several years. If treatment is successful, the latter parts of the treatment process may occur in the community, accompanied by regular visits to an out-patient forensic service. In treatment-refractory cases, courts may order preventive detention following the period of forensic psychiatric detention. Currently, approximately 500 persons are imprisoned under this law (Steinböck, 2009; Basdekis-Jozsa *et al.*, 2013).
- If a person with a chronic mental disorder, who already has a legal guardian (previously determined by a court following expert