A METHAETHICAL PERSPECTIVE ON NON-VOLUNTARY PSYCHIATRIC HOSPITALIZATION

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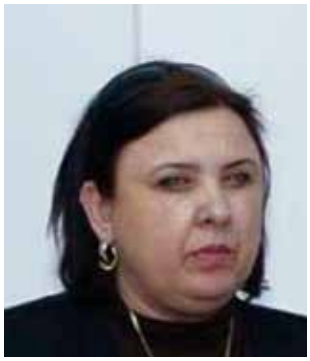

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ABSTRACT — This paper aims at emphasizing some analysis frameworks from (bio)ethical perspective on the non- voluntary hospitalization of the psychiatric patients which was not decided based on a court decision and / or a forensic report. The case study concerns a case in which the Romanian state was condemned by the ECHR for failing to follow the procedures agreed at European level on non-voluntary hospitalization nor was obtained a credible informed consent from the patient. In reasoning the decision for this case, the ECHR pointed out the seriousness of the fact that, in fact, it has been a cooperation of several state institutions, including a psychiatric hospital, the Police and the Prosecution. The case has considered limiting freedom of movement of persons — by non-voluntary hospitalization — at the same time endangering the health of patients by prescribing a medication specific to particularly aggressive disease that may have serious psychiatric side effects. ECHR considers that to perform such treatment would have been necessary to guarantee the possibility of a medical counter expertise. The case can be considered as a limitation of freedom of conscience, as the alleged reason of using of non-voluntary hospitalization by the parents of patient - major patient at the date of hospitalization - was the patient's appurtenance to a group — legally composed in Romania, but very disputed in terms of social, political and religious beliefs, a group who was dealing with an extremely negative public image in that period, and also with a very supported negative media campaign. This group was promoting a series of eastern spiritual practices of yoga.

KEYWORDS — Non-voluntary hospitalization; ethical perspective; ECHR; informed consent; psychiatric patients. human rights, human dignity, ethics, CEDO.

INTRODUCTION

This paper aims at emphasizing some analysis frameworks from bioethical perspective on the non-voluntary hospitalization of the psychiatric patients

which was not decided based on a court decision and/or a forensic report. The case study concerns a case in which the Romanian state was condemned by the ECHR for failing to follow the procedures agreed at European level on non-voluntary hospitalization nor was obtained a credible informed consent from the patient [1], [2]. In reasoning the decision for this case, the ECHR pointed out the seriousness of the fact that, in fact, it has been a cooperation of several state institutions, including a psychiatric hospital, the Police and the Prosecution. The case has considered limiting freedom of movement of persons — by non-voluntary hospitalization — at the same time endangering the health of patients by prescribing a medication specific to particularly aggressive disease that may have serious psychiatric side effects [3]. ECHR considers that to perform such treatment would have been necessary to guarantee the possibility of a medical counter expertise. The case can be considered as a limitation of freedom of conscience, as the alleged reason of using of non-voluntary hospitalization by the parents of patient — major patient at the date of hospitalization — was the patient's belonging to a group — legally composed in Romania, but very disputed in terms of social, political and religious beliefs, a group who was dealing with an extremely negative public image in that period, and also with a very supported negative media campaign. This group was promoting a series of eastern spiritual practices of yoga.

This article is not limited to the specific remarks for medical ethics, but we are interested in the deontic ethical perspective, compared to the utilitarian ethics and that specific to the ethics of care. We see that all parties involved can have a number of moral reasons to justify their conduct [4]. Our position is that non-voluntary hospitalization cannot be justified as a means of social control, except if an expert committee considers its necessity, and a court decides irrevocably the hospitalization. It also proposes that the pursuit, from the community perspective enforcement of non-voluntary hospitalization, to be made jointly by the probation services — by Community psychiatry specialized staff to be hired in as probation counselor.

THE DECONSTRUCTION OF THE IDEA OF NON-VOLUNTARY HOSPITALIZATION

Roberts and Reich distinguish three public health analysis frameworks, referring to the restriction or limitation of the individual's autonomy in order to achieve the public good — or at least limit the occurrence of situations that negatively affect individuals or communities [5]. The three proposed frameworks emerge from the following models: utilitarian (centered on results and effects), libertarian (centered on rights of individuals and opportunities) and communitarianism (based on the virtues of individuals as moral actors) [6]. In our view, the three directions can be considered as major ethical paradigms that build the meta-ethic substrate of the discourse on non-voluntary hospitalization as a public health issue on the one hand, and legal protection of human rights on the other.

Erina White [7] deconstructs the theories of non-voluntary hospitalization based on the ethical framework of public health formulated by Roberts & Reich [6]. The authors deconstruct claims of legitimation on libertarian or liberal egalitarian basis of non-voluntary hospitalization of psychiatric patients (with suicide attempts) [8]. The assessed ethical dilemma is to choose between the advantages of involuntary admission — the prevention of any self-healing action — and the risks of patient vulnerability through the long-term effects of non-voluntary hospitalization. In the case of European Court of Human Rights' judgment, non-voluntary hospitalization is supposed to have been based on the possible autolytic manifestations of belonging to the controversial group of yoga practitioners. Although the patient was major, non-voluntary hospitalization was based on the opinion of the caregivers (the mother), according to which she is suffering from psychiatric disorders — previously not diagnosed and uncertified by a forensic expertise board, which may have been caused by yoga practice.

The *consequential* (utilitarian) *perspective* supports non-voluntary hospitalization [9] when the risks associated with not taking this measure, either for the patient or for the society, are estimated to be major, exceeding the benefits of maintaining the patient in the normal care system. It is generally a paternalist approach, which emphasizes the decision of the expert against the IC (informed consent) of the patient [10], [11]. The consequential paradigm takes into account the effects of an action — or the lack of it, thereof — that can be assumed from the most plausible scenarios of patient evolution in the present case. To justify non-voluntary hospitalization, there should be reasonable suspicion that the patient is dangerous to himself or others.

The *libertarian perspective* based on rights (and centered on the idea of autonomy) generally rejects non-voluntary hospitalization, admitting it only on the basis of a legal decision that limits the patient's right of decision [12]. Even in this situation, emphasis is placed on informing the patient, communicating with him, on his right to challenge the measure taken. This is an anti-paternalist approach [13]. In the above-mentioned case, the restriction of rights was made without the appeal of an expert commission to establish a possible lack of discernment and a potential imminence of aggressive behavior towards himself or others.

The *egalitarian libertarian perspective* emphasizes the equality of access to resources (hospitalization being a resource made available by the community). Non-voluntary hospitalization is acceptable because of the state's obligation to equally protect the life and integrity of all citizens, even against their own decisions taken in the inability of a voluntary consent [14]. The right to health is a priority, as it makes it possible to exercise the other rights and freedoms. The egalitarian liberal outlook calls for non-voluntary hospitalization exclusively to ensure equal treatment. This perspective requires that the decision of hospitalization be taken excluding the criteria of the person's random determination, social apprehension, estimated value of the person, level of income, social utility etc. From this perspective, a decision of non-voluntary hospitalization can be considered ethical when by restricting the patient's choices (eg suicide), it creates the possibility of subsequent equal access to decisions about one's own health [7], [15]. In our opinion, this latter argument belongs to the consequential perspective, referring to the future consequences of the medical decision, limiting the right of decision on the patient's own condition.

The *perspective for ethics of care* requires that the ethical decision on non-voluntary hospitalization be made by applying the level of maximum empathy: *as if it were a member of one's own family* [7].

All decisions on non-voluntary hospitalization (in the present case) were made on the basis of the delegated consent of the caregivers (the mother).

The *communitarian perspective* requires that the decision on non-voluntary hospitalization be made after a reflection such as: *I will feel ok* with the decision taken, regardless of the consequences [7]. In our opinion, this is basically a deontological Kantian perspective, a direct reference to the categorical imperative. We consider the *communitarian perspective* as referring rather to the *acceptability of the decision* in accordance with the moral standards that apply in that community. In the case at issue, the non-voluntary hospitalization was used as a means of social control in order to prevent the person from attending the courses of that yoga school, against which various accusations of human trafficking for the purpose of practicing prostitution were heard on the news, but also other possible anti-social facts. None of the accusations against the students of the yoga school have so far been proven in court. However, the media pressure has generated an extremely unfavorable trend towards that yoga school, which has led, in the defendant's opinion, to the need to resort to imprisonment by non-voluntary hospitalization to prevent further participation in the courses of that yoga school. A series of stereotypes such as the incestuous yogic movement conducts a number of practices considered to be *brainwashing*, with dissociating or counter-social effects, have reinforced the belief that the hospitalization is justified.

The *postmodern perspective* focuses on the *social and communicative construction of ethics*. An ethical value is privileged depending on the existing power positioning situations in the society. Postmodern ethics are transparent in different values. The Foucauldian perspective tends to resist non-voluntary hospitalization because it introduces an unlawful space to exercise power: the power to restrict a person's freedom, starting from the *social construction of mental illness*. Psychological illness, like psychiatric normality, is a social construct, and the justification for restricting a person's freedom based on an interpretative agreement reached among psychiatrists is unlawful, as long as a unique definition of mental illness cannot be accurately established. Non-voluntary hospitalization can be accepted as a result of a consensus of specialists, but only with the maintenance of the patient's rights to a second opinion and the appeal to an extra-medical (judicial) entity. The postmodern — developmental perspective — asks the questioner about the benefits deriving from a person's involuntary admission [7].

THE PERSPECTIVE OF MEDICAL DEONTOLOGY

Non-voluntary hospitalization applies to patients who are incapable of IC in accordance with Law 487/2002. Criteria for non-voluntary hospitalization are generally correlated with the risk of potentially harmful behaviors for themselves or for others. The legitimacy of non-voluntary hospitalization is often disputed, going to the establishment of associations that militate for the complete abolition of non-voluntary hospitalizations.

FRAMEWORKS

World Medical Association (WMA) — principles (I)

The World Medical Association (WMA) established in 1995, in the framework of the 47th General Assembly held in Bali Indonesia, a series of mandatory ethical principles for member countries:

- — non-discrimination of psychiatric patients on social or medical criteria.
- — establishing the patient's psychiatric therapeutic relationship based on mutual trust, with concrete and accurate information given to the patient on the treatment and the whole therapeutic process, including its consequences.
- — treatment — including non-voluntary hospitalization — is an exceptional situation and can only be

applied in acute situations when the patient's condition constitutes a danger to himself or to the society.
— mandatory treatment and hospitalization can only be imposed for a fixed period of time.

POSSIBLE SOLUTIONS TO AVOID NON-VOLUNTARY HOSPITALIZATION — COMMUNITY SUPPORT

Appropriate community support is not invasive to the private life of the subject, making it easier to then accept long-term non-voluntary hospitalization. The ethical approach of the psychiatric patient calls for respect for his inherent dignity. Refusing to stigmatize psychiatric patients makes them adherent to therapy, especially if the hospital is no longer seen as a prison (restriction of liberty) for an unlimited period, and without the possibility of a call or conditional release [16]. The role of community psychiatry [17] is not a complete remission of psychiatric illness, but rather the development of the subject's abilities for maximum social integration [18]. The most important dimensions of the community care model are socialization, rehabilitation, empowerment, reintegration.

CONCLUSION

The ethical decision on non-voluntary hospitalization (in the case discussed) should be based on a threefold reflection on:

—the real possibility of an IC — even limited — of the subject and a decisional/relational autonomy.

—the consequences of non-voluntary hospitalization vs. community care

—respecting individual freedom and dignity of the subject.

Our position is that non-voluntary hospitalization cannot be justified as a means of social control, unless an expert commission appreciates its necessity, and a court of law irrevocably decides for hospitalization.

We also propose that Community follow-up of non-voluntary hospitalization be carried out jointly by probation services — through community psychiatric staff who will be employed as probation counselors.

ACKNOWLEDGEMENT

A previous version of the article has been presented as a poster in the World Congress of Bioethics, organized by World Bioethic Association in 2016, in Edinburgh, United Kingdom.

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