







# COUNCIL OF EUROPE

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- Founded in 1949
  - groups together 46 countries including 21 countries from Central and Eastern Europe,
  - has granted observer status to 5 more countries (the Holy See, the United States, Canada, Japan and Mexico),
  - is distinct from the 25-nation European Union
- The Council was set up to:
  - defend human rights, parliamentary democracy and the rule of law [e.g. European Court of Human Rights]
  - develop continent-wide agreements to standardise member countries' social and legal practices,
  - promote awareness of a European identity based on shared values and cutting across different cultures.




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Recommendation 2004 (10) of the Committee of Ministers to member States to ensure the protection of the human rights and dignity of people with mental disorder, especially those placed as **involuntary patients** in a psychiatric establishment

*Adopted September 2004 (with Explanatory Memorandum)*



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Note 1 *When adopting this decision, the Permanent Representative of the United Kingdom indicated that, in accordance with Article 10.2c of the Rules of Procedure for the meetings of the Ministers' Deputies, he reserved the right of his Government to comply or not with the Recommendation as a whole.*

# GUIDELINES

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- I – Object and scope
- II – General provisions (e.g. discrimination)
- III – Involuntary placement in psychiatric facilities, and involuntary treatment, for mental disorder
- IV – Placement of persons not able to consent in the absence of objection
- V – Specific situations (termination of pregnancy, irreversible treatments)
- VI – Involvement of the criminal justice system
- VII – Quality assurance and monitoring
- Total of 38 recommendations

# Article 2 – Scope and definitions

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1. This Recommendation applies to persons with mental disorder defined in accordance with internationally accepted medical standards.
2. Lack of adaptation to the moral, social, political or other values of a society, of itself, should not be considered a mental disorder.

*‘Involuntary measures in relation to the use of alcohol or psychoactive substances alone should be used with great caution and on the advice of medical specialists in the treatment of people who misuse alcohol or psychoactive substances’ [Explanatory memorandum].*



# **Article 8 – Principle of least restriction**

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Persons with mental disorder should have the right to be cared for in the least restrictive environment available and with the least restrictive or intrusive treatment available, taking into account their health needs and the need to protect the safety of others.

# Article 9 Environmental and living conditions

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1. Facilities designed for the placement of persons with mental disorder should provide each such person, taking into account his or her state of health and the need to protect the safety of others, with environmental and living conditions *as close as possible to those of persons of similar age, gender and culture in the community.*

# Article 10 – Health service provision

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Member states should, *taking into account available resources*, take measures to:

- i. provide a **range of services** of appropriate quality to meet the mental health needs of persons with mental disorder, taking into account the differing needs of different groups of such persons, and to ensure **equitable access** to such services;
- ii. make **alternatives** to involuntary placement and to involuntary treatment as widely available as possible;
- iii. ensure sufficient provision of hospital facilities with appropriate levels of security and of community based services to meet the health needs of persons with mental disorder involved with the **criminal justice system**;
- iv. ensure that the **physical health care needs** of persons with mental disorder are assessed and that they are provided with equitable access to services of appropriate quality to meet such needs.



# Article 11 Professional standards

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1. Professional staff involved in mental health services should have **appropriate qualifications and training** to enable them to perform their role within the services according to **professional obligations and standards**.
  
2. In particular, staff should receive appropriate training on:
  - i. .. human rights ...
  - ii. understanding, prevention and control of violence;
  - iii. measures to avoid the use of restraint or seclusion;

# III – Involuntary placement & treatment for mental disorder

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- The provisions of this apply to persons with mental disorder who are:
  - i. able to consent and **are refusing** the placement or treatment concerned; or
  - ii. not able to consent and **are objecting** to the placement or treatment concerned.
- It does not apply to:
  - the person with mental disorder who is **not able to consent** and **does not object** to the placement



## **Article 26 – Placement of persons not able to consent in the absence of objection**

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- Member states should ensure that appropriate provisions exist to protect a person with mental disorder who does not have the capacity to consent and who is considered in need of placement and does not object to the placement.

# III – Involuntary placement & treatment for mental disorder

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- Distinction between treatment & placement:
  - Separate decision-making process
  - Applies therefore whether admission occurs or not:
  - Community treatment seen as part of home treatment as less restrictive alternative to admission
  - Termination occurs according to same principles – so extension could not occur where criteria not met (current ECHR position)

# Article 17 – Criteria for involuntary placement

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1. A person may be subject to involuntary placement only if all the following conditions are met:
  - i. the person has/*may have* a mental disorder;
  - ii. the person's condition represents a significant risk of serious harm to his or her health or to other persons;
  - iii. *the placement includes a therapeutic purpose;***
  - iv. no less restrictive means of providing appropriate care are available;
  - v. the opinion of the person concerned has been taken into consideration.



# *Definitions*

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“therapeutic purposes” include prevention, diagnosis, control or cure of the disorder, and rehabilitation.

“competent body” means an authority, **or a** person or body provided for by law which is distinct from the person or body proposing an involuntary measure, and that can make an independent decision.

# Article 19 Principles concerning involuntary treatment

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Involuntary treatment should:

- i. *address specific clinical signs and symptoms;*
- ii. *be proportionate to the person's state of health;*
- iii. *form part of a written treatment plan;*
- iv. *be documented;*
- v. *where appropriate, aim to enable the use of treatment acceptable to the person as soon as possible.*



Dear Louis

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Has the Government reconsidered its position on the Council of Europe recommendation on Psychiatry and Human Rights? Its position at the time of the Committee of Ministers adoption of it was: Note 1 *When adopting this decision [etc]...*

This has certainly devalued the recommendation reducing its potential impact in countries where it could have a substantial impact, e.g. in Eastern Europe. I'm speaking about the recommendation at a College conference on Friday which has prompted this inquiry at this time. It is probably going to be raised elsewhere again during the debates on the proposed amendments to the Act and full adoption of the recommendation would sent out a very positive signal.

Regards

Professor David Kingdon



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**David,**

**Louis doesn't know of any change in the Government's position. He has suggested you ask contact Jane Allberry (I've copied this response to her).**

**Best wishes.**

**Carol**

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**Thanks, Carol. I have picked this up through the MH Bill mailbox, which was copied into the email, and we will reply.**

**Jane Allberry  
Mental Health Legislation  
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