Peter Lehmann

Criminal prosecution of legally liable psychiatrists as a pre-requisite of the UN-CRPD

Planned presentation to the ultimately canceled online event "Epistemic Violence and Racism in Mental and Social Services", organized by Enric Garcia Torrents, Medical Anthropology Research Center, Universitat Rovira i Virgili, Tarragona, Spain. August 30, 2024.

In its report to the General Assembly of the United Nations in 2015, the Human Rights Council's Working Group on Arbitrary Detention demanded the immediate cessation of any forced treatment, to unlock the psychiatric wards, to inform persons of their right to leave, and the establishment of a public authority to provide for access to housing, means of subsistence and other forms of economic and social support in order to facilitate de-institutionalization and the right to live independently and be included in the community. Also assistance programmes should be developed – not centred on the provision of mental health services or treatment, but free or affordable community-based services, including alternatives that are free from medical diagnosis and interventions. In the guideline no. 20e, the final demand was that

> "Injunctive relief should consist in an order requiring the facility to release the person immediately and/or to cease immediately any forced treatment and any systemic measures, such as those requiring mental health facilities to unlock their doors and to inform persons of their right to leave, and establishing a public authority to provide for access to housing, means of subsistence and other forms of economic and social support in order to facilitate de-institutionalization and the right to live independently and be included in the community. Such assistance programmes should not be centred on the provision of mental health services or treatment, but free or affordable community-based services, including alternatives that are free from medical diagnosis and interventions. Access to medications and assistance in withdrawing from medications should be made available for those who so decide" (Working Group on Arbitrary Detention, 2015, p. 25).

In the same year, this demand was included in the same wording in guideline 14 ("The right to liberty and security of persons with disabilities")

of the UN Convention on the Rights of Persons with Disabilities (CRPD 2015). In October 2023, the World Health Organization and the United Nations High Commissioner for Human Rights demanded in the protocol *Mental health, human rights and legislation*: Guidance and practice not only a higher standard for free and informed consent, but also a governmental initiative to guarantee by law support in withdrawal:

> "Countries should adopt a higher standard for the free and informed consent to psychotropic drugs given their potential risks of harm in the short and long term. Countries, for example, can require written or documented informed consent (e.g., expressed by a recording in video or audio formats) after providing detailed information on potential negative and positive effects, and the availability of alternative treatment and non-medical options. *Legislation can require medical staff to inform service users about their right to discontinue treatment and to receive support in this. Support should be provided to help people safely withdraw from treatment with drugs*" (WHO / United Nations High Commissioner for Human Rights, 2023, p. 57 – Emphasis P.L).

It is not only the UN CRPD that is extremely critical of psychiatric treatment using formal or informal coercion. Various United Nations bodies speak of ill-treatment and even torture in this context. For example, Juan Méndez, the United Nations Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as well as the United Nations treaty bodies, have found that involuntary treatment and other psychiatric interventions taking place in healthcare facilities can constitute forms of torture and ill-treatment (United Nations 2013).

Seid al-Hussein, the United Nations High Commissioner for Human Rights, mentions different human rights violations in case of administration of psychiatric measures without informed consent or carried out under false presences:

> “Involuntary treatment refers to the administration of medical or therapeutic procedures without the consent of the individual. Treatment administered, for example, on the basis of misrepresentation would constitute involuntary treatment, as would treatment given under threat, *without full information* or on dubious

> medical grounds. Guaranteeing informed consent is a fundamental feature of respecting an individual's autonomy, self-determination and human dignity. (…) Forced treatment and other harmful practices, such as solitary confinement, forced sterilization, the use of restraints, forced medication and overmedication (*including medication administered under false pretences and without disclosure of risks*) not only violate the right to free and informed consent, but constitute ill-treatment and may amount to torture" (United Nations 2017, pp. 7 & 11 – Emphasis P.L.).

'Intentional bodily harm under Section 223 and negligent bodily harm under Section 229 shall only be prosecuted on application, unless the prosecuting authority deems it necessary to intervene ex officio due to the special public interest in prosecution.'

In view of their suffering, the masses of people receiving psychiatric treatment deserve public interest and such a step. Especially as the percentage of people who come into contact with psychiatry in the course of their lives is increasing rapidly. Equality of psychiatrically treated people before the law must also entail equality of their practitioners before the law. The culture of cover-ups and concealment must come to an end; criminal law must also apply to psychiatrists and their staff. As a rule, no initiative to expose themselves to equality before the law can be expected from those who have established themselves well and their interest groups. However, for the rest of society, the implementation of the UN Convention on the Rights of Persons with Disabilities and the hopefully accompanying strengthening of the autonomy, resources and creative power of people with psychiatric diagnoses would bring considerable benefits. This also applies not least to the costs, such as the direct follow-up costs of conventional psychiatric treatment with its diverse symptoms ('side effects'), for example costs for treatment, care and rehabilitation, and the indirect costs such as loss of production, sick leave, reduced earning capacity or inability to work. These costs are likely to amount to billions of euros; they are borne in ever-increasing amounts by each and every person with health insurance.

And there needs to be a commitment to the equality of psychiatric patients before the law. However, the idea of equality before the law for those affected remains absurd as long as those providing treatment are favoured before the law over other violators. Without the equality of practitioners before the criminal law as well as before civil law (for example, with regard to the obligation to pay

compensation or the withdrawal of a licence to practise), those affected remain defenceless against the violation of their rights by formal and informal psychiatric violence.

P.S.

Individuals or associations can learn how to file complaints about violations of the UN CRPD by visiting the United Nations website https://www.ohchr.org/en/reporting_violations

Sources

CRPD – Committee on the Rights of Persons with Disabilities (2015). *Guidelines on article 14 of the Convention on the Rights of Persons with Disabilities – The right to liberty and security of persons with disabilities*. Adopted during the Committee's 14th session, held in September 2015. Online resource https://www.ohchr.org/sites/default/files/Documents/HRBodies/CRPD/14thsession/GuidelinesOnArticle14.doc

WHO – World Health Organization / OHCHR – Office of the United Nations High Commissioner for Human Rights (2023). *Mental health, human rights and legislation. Guidance and practice*. Geneva: WHO / OHCHR. Online resource https://www.who.int/publications/i/item/9789240080737

Working Group on Arbitrary Detention (July 6, 2015). *Report to the United Nations, General Assembly, Thirtieth session, agenda item 3 (Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development).* Document A/HRC/30/37. Online resource https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F30%2F37&Language=E&DeviceType=Desktop&LangRequested=False / https://documents.un.org/doc/undoc/gen/g15/149/09/pdf/g1514909.pdf