HELLENIC REPUBLIC

GREEK NATIONAL COMMISSION FOR HUMAN RIGHTS

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Rights of People with Psychiatric Background: Protection Issues within the Framework of Psychiatric Reform in Greece[1]

(summary in English)

I. Background of NCHR's concern by the rights of persons with mental health problems

The first time the NCHR touched upon the issue was in 2003, when it adopted a resolution on "Human Rights protection issues in the case of custody of incapacitated persons in psychiatric hospitals". The resolution concluded with a series of recommendations for the reform of the penal law referring to the abovementioned persons.

Furthermore, in January 2004, the NCHR elaborated and submitted to the competent authorities a proposal for the ratification of the Optional Protocol *(18/12/2002)* of the United Nations Convention Against Torture (UNCAT, 1984, N. 1782/1988). The Protocol (hereinafter, the OPCAT), aims at enforcing the effective implementation of the Convention, through the creation of a preventive system of visits to places of custody, including psychiatric hospitals, psychiatric clinics and other units of psychiatric care. These visits are to be held by an international independent body (the Sub-Committee) and by national independent bodies (the National Preventive Mechanisms: NPMs). It is to be noted that Greece signed the Protocol on 3/3/2011.

[1] *Adopted unanimously by the Plenary of the GNCHR at its session of 14 April 2011. Rapporteurs Kostis Papaioannou, GNCHR President and Christina Papadopoulou, scientific researcher of the GNCHR*

In September 2004, the NCHR examined the issues presented before it by the report of Mr. Varouhakis, a psychiatrist, (President of the Association "Eunomia" for the promotion of rights of persons with mental illnesses or disabilities, and ex- President of the Medical Service of the Athens Psychiatric Hospital), on the living conditions of mentally ill patients, hospitalized in three hotels in the centre of Athens, who were moved there temporarily, due to the severe damages provoked by the earthquake of 1999 to the Athens Psychiatric Hospital. The NCHR performed a series of in situ visits and formulated its "Observations and Recommendations" on the subject matter. This was NCHR's first direct contact with the field of mental illness and with the complex context of the psychiatric reform in Greece.

In September 2005, the NCHR commented on the "Draft Guide on Quality Standards in the Units of Mental and Social Rehabilitation", which was submitted to it by the Ministry of Health. The guide included evaluation indicators and criteria for the services provided.

The NCHR did once again deal with mental patients' related matters in mid 2009, when it examined a report submitted by the "Argo" Network of Psycho-social Rehabilitation and Mental Health Institutions. In this report, the member institutions highlighted the problems they confronted, due to the lack of continuity and coherence of the funding received, which in turn had a disastrous impact on the therapeutic care services offered. The severe problems in this area caused the intervention of the European Commissioner for Employment, Social Affairs and Equal Opportunities, V. Spidla and the subsequent adoption of a Memorandum co-signed by the Minister of Health and the EU Commission on the full implementation of the psychiatric reform as well as that of the "Psychargo" programme. The NCHR convened two consultations with a wide range of authorities and specialised institutions. The first was addressed to mental health professionals, administrative personnel of mental health units, public hospitals' psychiatric sections representatives, independent authorities and a series of other collectivities; the second

consultation was addressed to the associations formed by the persons having a psychiatric background and their families. Through these meetings, the NCHR was able to formulate a clearer view of the challenges related to the protection of human rights in this specific area, and collected a large number of recommendations. Prior to the present report, the NCHR conducted new in situ visits to psychiatric hospitals and units of mental care services and it held a series of working meetings with mental health professionals.

In addition, many bodies/members of NCHR (the Greek Ombudsman, Amnesty International/Greece, the Marangopoulos Foundation for Human Rights, the Hellenic League for Human Rights, SY.RIZ.A. and PASOK political parties etc), have been active in mental patients' related matters.

II. Terminology used; stigmatization

Mental health is a term used to describe a level of cognitive and psychological well-being and/or as the absence of a mental disorder. Cultural gaps, subjective evaluation and various scientific theories can influence the society's views and perceptions on mental health and mental illness.

There is clearly a lack of consensus as to the terms to be used and as to the content attributed by the legislator to these terms; this is also true for the society as a whole and for the "community" of mental patients. The difficulties encountered in selecting the appropriate terms when it comes to mental illness are perhaps even greater than the difficulties one has when talking of disability. *Recipients* or *users* of mental health services, *people with mental health problems, mentally ill, mentally disturbed, patients, psychiatric patients, psychiatric survivors, people with psychiatric background,* are some of the terms currently used. The periphrastic term *"person with a psychiatric background"* seems to prevail lately in the mental health field, as it is considered as less stigmatizing

than others, as it refers to this background as part of a broader set of characteristics and experiences of the person.

The medical approach was dominant for a long time in both legal treatment and policy matters. The mentally ill people were considered as unable to take care of themselves, or even dangerous. However, there is no "patient" wishing to be classified according to his medical diagnosis alone. This would reinforce them being perceived as "disabled", focusing on their dysfunction, causing a 'compassion' reaction from the society, and thus feeding to the charity conservatism and/or populism.

The psychiatric reform movement is based on the ideological conviction and findings that society has the ability to revitalize its weakest members through social solidarity mechanisms. The main concerns about mentally ill people have to do with their unpredictable and potentially hazardous behavioral manifestations of their disease. However, it is scientifically proven that when there is a strong social support system that does not isolate / exclude a "different" person, the vulnerability to mental illness is lower. At the same time, this context helps the mentally ill persons to regain their functionality more easily. It is also proven, that the appropriate and timely treatment, even when dealing with psychotic patients -the most common inmates in psychiatric hospitals-, renders the patients socially viable during long periods and it can help them completely recover even after repeated acute phases of their disorder.

People living with mobility problems were the first to organize themselves in the early 70s. Gradually, the social approach for disability gained ground. This had as a result the formation of pressure groups, claiming the right to equal participation in the social environment, -including 'positive discrimination' where need be-, thus weakening the medical approach.

Nowadays, social representation for mental illness has evolved around the concept of disability, whereas stereotypes equating mental illness with aggressiveness seem to have weakened. On the other hand,

the use of the term "disability" carries the risk of "homogenizing" a diversified group of people –the mentally ill people-, as regards their needs, their issues and their treatment. If mental illness is considered as a "disability", stereotypes of inferiority could be reproduced, thus further stigmatizing the mentally ill.

This fear explains the hesitation of a large part of mentally ill people to integrate to the so-called 'disability movement', and therefore, collective action of mentally ill persons and/or their families is very recent.

The foundation of this fear can be seen in the results of a survey carried out by Metron Analysis in June 2009 in the Municipality of Athens: 35% of the people interviewed believed that mentally ill people are "always" or "often" a public danger, 62% believed that mentally ill people can "rarely" or "never" work in regular jobs, 26% would never sit next to a mental patient while in the bus, while 88% would not (probably not or definitely not) get married to a mental patient [a rate significantly higher from those appearing willing to get married to a migrant (45%) or a person having physical disabilities (48%)]. This reluctance was greater only towards the HIV positive persons. 41% of the people interviewed would not hire a mental patient, a rate overtopped only by the group of drug users. 31% would not be comfortable living next to a mentally ill person, while 44% would not rent their house to them. However, only 16% would oppose to the creation of a service for mental patients in their neighborhood; 94% would agree on possible initiatives regarding mentally ill people taken by the Municipality of Athens and 74% appeared willing to take part in these initiatives. Seen combined, these measurements place the so-called "Indicator of Social Distance" vis-à-vis the mentally ill, to the percentage of 27%.

III. International and national institutional framework

A) The international protection framework

Beyond the instruments forming the International Charter of Human Rights, the adoption of the Resolution *A/RES/46/119* on the "The protection of persons with mental illness and the improvement of mental health care" by the UN General Assembly on 17/12/1991 represents a significant step in the international protection of mentally ill persons. The GA Resolution on the "Rights of People with Mental Disability" of 1971 and the *A/RES/48/96* Resolution on the "Standard Rules on the Equality of Opportunities for Persons with Disabilities" (20/12/1993), are also part of the UN institutional framework.

In the framework of the Council of Europe, we should mention the CM Recommendation on the *"Legal Protection of Persons suffering from Mental Disorder placed as involuntary patients"* (22/2/1983), the PA Recommendation 1235 (1994) on the *"Psychiatry and Human Rights"* (12/4/1994), the CPT "*Standards* on the *Involuntary placement in Psychiatric Establishments*" {CPT/Inf(98)12}, the *White Paper* on the *"Protection of the Human Rights and Dignity of people suffering from mental disorder, especially those placed as involuntary patients in a psychiatric establishment"* (3/1/2000, drafted by the Working Group on Psychiatry and Human Rights of the Steering Committee on Bioethics) and finally, the *CM Recommendation (2004)10 concerning the protection of the human rights and dignity of persons with mental disorder (22/9/2004).*

As regards the EU Framework we should mention the *Charter of Fundamental Rights,* the *Council Resolution on the Promotion of Mental Health* (18/11/1999), the *European Commission Green Book {COM(2005)484}: "Improving the Mental health of the population: Towards a strategy on mental health for the European Union"* (14/10/2005), the *European Pact for Mental Health and Well-being",* signed by the EU along with the WHO in 13/6/2008, and the *European Parliament Resolution on Mental Health* {2008/2209(INI)}. Moreover, there is a number of non-binding but still important texts for the respect of rights of mentally ill people, such as the Hawaii Declaration/II (International Psychiatry

Conference 1983), the Athens Declaration on the "Rights and Legal Protection of a mentally ill person" of the World Psychiatric Association (Athens 17/12/1989), and the Madrid Declaration on the "Ethical Standards for Psychiatric Practice" (G.A. of the World Psychiatric Association 25/8/1996).

Furthermore, it should be noted that after the EU's decision to sign the UN Convention on the Rights of Persons with Disabilities (the first international human rights convention ever ratified by the EU), the EU Fundamental Rights Agency initiated a research survey on mental health issues, while it has already published the results of the first part of the survey, regarding the political participation of mentally ill people in the EU member States.

The *UN Convention on the Rights of Persons with Disabilities* is by far the most important and binding international instrument. Its scope of protection includes people with mental, cognitive or sensory disabilities.

B) The domestic institutional framework

The Law 1397/1983 regulates for the first time the right to health within the Greek legal system. Provisions for the mentally ill care and rights are mainly found in Laws 2071/1992, 2519/1997 and 2716/1999, supplemented by provisions in the Civil and Penal Codes.

Law 2071/1992 establishes Psychiatric Care Units and reforms the existing system of involuntary placement. Law 2716/1999 on Mental Health Services, is following the principles of Psychiatric Reform. According to its provisions, the State is responsible for providing mental health services, aiming at prevention, diagnosis, remedy, treatment as well as the psychosocial rehabilitation of mentally ill persons. It places under State supervision both the public and the private non-profit Mental Health Units.

Law 2447/1996 introduced the measure of judicial protection. Article 1666.1 of the Civil Code provides that "an adult is submitted to judicial

protection: 1. when he/she is wholly or partly unable to take care of his affairs, due to psychological or mental disorder, or because of physical disability."

Article 28 of the Code of Medical Ethics describes in great detail the context of provision of mental health care (right to information, respect of the dignity of the patient, etc.).

The Ministry of Health has established a Mental Health Division, composed of the Hospital Care and the Outpatient Care Departments. In order to promote the rights of mentally ill persons, an *Office for the Protection of Rights of People with Mental Disabilities* has been created (within the Independent Agency for the Protection of Patients' Rights) (par. 1 of Art. 2 of Law 2716/1999). There is also a *Special Committee for the Supervision of the Protection of the Rights of Persons with Mental Disorders* operating within the framework of the National Committee for the Supervision of the Protection of Patients' Rights, created by Law 2519/1997 (paragraph 2 Art. 2 of Law 2716/1999). Moreover, a 17-member Commission for the Review of 'PSYCHARGO' Program has been established, consisting of experts in the field of mental health and other institutional agents, -including the Health Ombudsman-. This Committee should complete its work by September 2011.

IV. International monitoring bodies

A) CPT Observations and the response of the Greek Authorities

The European Commission for the Prevention of Torture (hereinafter CPT) has carried out a number of in situ visits to mental health care places. During its first visit, in 1993, the CPT visited the

Psychiatric Unit at Korydallos Prison Complex, the Attica State Mental Hospital at Daphni, the Attica State Mental Hospital for children (Rafina), the Psychiatric Hospital in Leros and Public Health Establishments of Leros. As for the Psychiatric Unit at Korydallos Prison Complex, CPT made extensive observations focusing on medical and nursing staff shortcomings, overcrowding, the large number of drug addicted prisoners, the excessive use of mechanical restraint and isolation as 'therapeutic' measures, the excessive use of suppressive medication to inpatients / prisoners for behavioral control purposes, the absence of detailed medical records, and, finally, the unacceptable conditions in the intensive care unit. The observations on other institutions/hospitals included once again the excessive use of mechanical restraint and isolation, staff deficiencies, lack of qualified staff, and the large number of involuntary placement cases. The report stresses the need for a more effective implementation of the available EU funding, as well as the establishment of a complaints procedure (for inmates), and suggested the supervision of the institutions by an independent external body.

During the 1996 visit to Attica State Mental Hospital for children (Rafina), the CPT noted some improvements in material living conditions and staff adequacy. However, CPT highlighted the absence of therapeutic activities other than medication. It also expressed its concern on the fact that patients were not allowed out daily into the open air. The overall assessment was that the supposed 'Children's Psychiatric' hospital, operated in fact as a hospital residence for children and adults with severe mental hysteresis, autism, etc.

In 1997, CPT visited again the Psychiatric Unit at Korydallos Prison Complex, the Attica State Mental Hospital at Daphni, and the Thessaloniki State Mental Health (for the first time). For the Korydallos Unit, the CPT's remarks were identical to those of 1993 and they underlined the same shortcomings: the issue of excessive use of mechanical restraint and the number of involuntary placement cases for both psychiatric hospitals.

In 1999 and 2001, the CPT carried out two follow-up visits to the Psychiatric Unit of Korydallos Prison without noticing any significant improvement, except a small increase in staff numbers.

The last CPT visit in psychiatric surrounding took place in 2005, once again in Korydallos Prison Psychiatric Unit and the Psychiatric Hospital of Corfu. Observations on Korydallos were basically similar to the previous ones, adding that medical files of patients were incomplete and recommending the introduction of drug rehabilitation programs. As regards the Corfu Psychiatric Hospital, the main problem areas were once again the recourse to mechanical restraints, the involuntary placement (including the transfer of patients by police vehicles), the absence of therapeutic activities, as well as the absence of an interdisciplinary team in incident management.

The Greek authorities' response to this last CPT report is based on the planned actions of the PSYCHARGO Programme, as well as on the overall mental health reform and the shutdown of psychiatric hospitals. It refers to the introduction of the SC LTD (Social Cooperatives Limited) and the new programs of Social Rehabilitation for mentally ill people**,** the coordinated efforts of the MHSS and the Ministry of Justice on the legislative amendments towards the resolution of issues related to the incapacitated persons' criminal treatment. In addition, the response mentions the multiplication of therapeutic programmes and activities, the reinforcement of psychosocial rehabilitation activities, as well as the nursing

staff' s training on patients' rights and the prohibition of their ill-treatment, the plans on recruiting specialised staff, and the recent Circular on mechanical restraint addressed to all public psychiatric hospitals. Finally, it contains a detailed catalogue of coordinated actions taken by all competent authorities for the proper implementation of involuntary placement legal provisions and the dissemination of the CPT observations to all hospitals.

B) Convictions by the European Court of Human Rights

There are so far two convictions of Greece on issues relating to the rights of the mentally ill people by the ECtHR. Both are related to the failure of legal provisions regarding involuntary placement (Articles 5§1 and 5§4 of the Convention). It should be noted that, according to a series of decisions of the ECtHR, involuntary placement is only permitted when the mental disorder has been confirmed in an indisputable way, based on a thorough medical expertise and is justified only when every other measure has been proven insufficient to safeguard public or individual interests.

V. History of psychiatric care in Greece

In Greece, as in other countries, mentally ill persons were always subjected to the double control of psychiatry and law, before they became subjects and bearers of rights. Until the '80s, the public mental health services system was based on the institutionalized care offered by approximately ten psychiatric hospitals. In the early '80s, the mental health system Reform started. It was based on WHO guidelines and EU financial support, which funded Greece under Regulation 815/84, and had as its main purpose the de-institutionalization of chronic patients while developing community based mental health services and outpatient

psychiatric services. The most widely known leg of this program is the one reforming the Psychiatric Hospital of the island of Leros.

By 1992, legislation gave precedence to "guardianship" against the provision of therapeutic service. It was Law 2017/1992 which first set the grounds for mental health care in outpatient structures and rendered the patient bearer of rights. In order to protect the patient, this law establishes a set of protection measures on the involuntary placement procedure. In reality, the mental health services described in the law are non-existent. Even Law 2716/1999, which introduced a series of institutional and logistical infrastructure (new housing structures, division of mental care services into sectors, etc.), did not succeed in solving the problems of a mentally ill person against the psychiatric and the penal system.

In the end of 1997 the ten-year Psychiatric Reform Program codenamed 'PSYCHARGO' was initiated with EU funding. 'PSYCHARGO' included the development of a community housing network (Hostels, Boarding houses, Apartments) and other mental health units (Psychiatric Departments in General Hospitals, Day-Care Centres, Mobile Mental Care Units, Mental Health Clinics, etc.), as well as the reduction of the number of psychiatric beds in hospitals, until the complete shutdown of psychiatric hospitals.

Today there are over 450 Psychosocial Rehabilitation Community Units, staffed by 3,600 mental health specialists, of which 1,950 in legal entities of the private non-profit sector. There are approximately 1,500 mentally ill patients treated by the remaining Psychiatric Hospitals and the General Hospitals' Psychiatric Departments. Outpatient structures and 67 non-profit entities of various types provide mental care services to approximately 3,500 people, while patients and residents of private nursing houses are estimated up to 5,000. This population represents about 10% of the people with mental health problems. The rest 90% live in their own.

According to the European Commission Country Report for Greece (March 2008) 'Quality in and Equitable Access to Healthcare Services", the mentally ill people seem to face serious organizational obstacles when trying to access health services, as hospitals insist on recommending psychiatric treatment, even when the mental disorder is under control. Moreover, the survey highlights that the mentally ill often become victims of discrimination when visiting general hospitals.

Furthermore, the OECD survey (November 2010) on Mental Health in countries/members of the Organization (in connection with the economic crisis consequences worldwide) showed a sharp increase in mental health problems in several countries, *Greece being at the 1st rank.*

VI. Connecting mental health to human rights; main challenges.

During periods of crisis, social suffering and pressure for cost savings, the anxiety of a patient intensifies, while the tolerance level of the society is reduced. At times when the rights of a 'healthy' person are under question, special care services and rights of a mental patient are likely to shrink even further.

The main problems, as identified by mental health professionals and by mentally ill people, are the following:

A) Treatment and custody of criminally incapacitated mentally ill persons in a public treatment unit

Greek law provides for two types of mandatory detention of the mentally ill persons: the preventive one (provided by Law 2071/1992 concerning involuntary placement) applied regardless of the commission of a criminal offence, and the criminal one (regulated by Articles 69 & 70 of the Penal Code), applying to those having committed a crime, and having been judged as incapacitated and potentially harmful. The detention order (Article 69 of Penal Code) provides for the custody of the incapacitated

perpetrator (into a public treatment unit) acquitted from penalty or prosecution for the offense committed (due to mental dysfunction or consciousness disorder), who is, however, considered as potentially harmful to the public safety. The decision imposing the detention order declares the perpetrator innocent for the offence committed, and the measure lasts "as long as it is required by the public safety" (Article 70 of Penal Code). The detention order does not aim at punishing the offender, but at preserving the society from his/her hazardous behavior while taking care of him/her. However, according to Article 70, the sole criterion used for the continuation of this measure is the potential harmfulness of the inmate and not his/her mental health state. It may therefore be argued that the detention order in a mental hospital is essentially a disguised penalty, whereas the mentally ill inmate has no access to the 'benefits' of criminal prisoners (suspension of sentence, discharge under condition dismissal, licenses, etc.).

Since 2003, the NCHR had made detailed proposals for the revision of the relevant criminal law:

- ***Custody should be submitted to therapeutic principles; "public safety", a very vague and ambiguous term, should not be the sole criterion for the start and continuation of custody.***
- ***In addition, legislation should explicitly set the existence or the continuation of the particular disorder of mentally ill person rendering him/her dangerous, as the primary condition of start and continuation of custody, as it is provided by Law 2071/1992 (articles 95-99 related to preventive involuntary placement of the mentally ill).***
- ***Given that the implementation of these articles has resulted in long-lasting hospitalization in practice, it is also necessary to establish maximum time limits on the custody and treatment of incapacitated persons, as well as to provide the possibility of extending that limit on a relevant court judgment.***

- ***Furthermore, the court judgment ordering custody (and that of its continuation) should be subjected to appeal judicial review, through available legal remedy.***

Mental health specialists who have the experience of the implementation of this measure in mental hospitals share these views. They note that preventive custody nullifies the treatment of the incapacitated inmate, since there is currently no appropriate treatment which is not accompanied by social activities. At the same time, this system of creates serious problems in the hospital every-day routine.

The labeling (and the corresponding institutional treatment) of the patient as 'incapacitated', is not beneficial to the patient. The attribution of the criminal act committed exclusively and entirely to psychopathology, perpetuates the stereotype of the potential harm of the “insane” person. The stigmatization caused by this prejudice makes the mentally ill person behave ‘as he/she is expected to’, and as the label given to them by the social context, i.e. as a dangerous but not responsible person, whose actions will not have any penal consequences.

There is currently only one “Division for Incapacitated” in the Thessaloniki Psychiatric Hospital, while the other remaining psychiatric hospitals have had them removed. It has to be noted that psychiatric hospitals are always reluctant to offer guard and care to an incapacitated offender. It should be also noted that the Ministry of Justice has rejected so far the request of the Special Committee on the Protection of Rights of Persons with Mental Disorder to visit the Korydallos Prison Psychiatric Hospital.

The **NCHR recommends**:

- ***that the proper exercise of the institutional role of this Committee be assured.***
- ***the elaboration of a specific framework for the custody/treatment of these persons, which will be based on the parallel provision of appropriate medical care services.***

B) The involuntary placement

Articles 95-100 of Law 2071/1992 regulate involuntary placement. The law provides for a mental health care system which is meant to protect his/her dignity by setting the procedure of involuntary placement under judicial control -incorporating the ECHR principles-. However, the application of this Law proved to be problematic, due to the absence of outpatient services that could be the answer/solution to involuntary placement. Law 2716/1999 introduced alternative health care services (sectorisation of services, community based psychiatric care, primary care etc.), which would act as a filter in order to make involuntary placement the "last resort" for the treatment of the patient. **Nevertheless, the numbers are telling: the percentage of involuntary placement is up to 55-65%, whereas in the rest of the EU countries it does not exceed 7-8%.** General hospitals do not welcome involuntary placement cases, as they are overcrowded with their other patients, and they do not enjoy the presence of police officers. The shutdown of the majority of Psychiatric Hospitals, combined with the lack of primary mental health care services and community based services, put a great deal of pressure on the General Hospitals as regards involuntary placement cases. Thus,, General hospitals are forced to function as closed-door systems with security measures in order to prevent patients from running away, something which is not a priori part of their operations' description. Another big issue is that of the so-called "revolving door", i.e. the psychotic patients and their families left with no other choice but the involuntary placement in hospital units with folding beds, mechanical restraints and locked doors…, from which they are then discharged due to bed shortages. Needless to say that in these conditions any sense of therapeutic continuity is lost until a new acute phase occurs, which will drive them once again to the hospital.

Moreover, the high percentage of involuntary placement cases indicates that in spite of the law, the perception of the potentially harmful

mental patient is still persisting in the minds of the prosecutor, the judge and the psychiatrist. The problems in implementing Law 2071 are identified in the entire spectrum of its provisions, i.e. from the diagnosis (lack of sufficient justification, non-individualized evaluation of the patient), to the transport of patients (in 97% of the cases by police squad cars), to the provision of information to the patient, to the judicial control, to the patient's presence at the court hearing, and to the duration of the hospitalization.

- ***The NCHR recommends the creation of a Special Prosecutor – based on the model of Minors' Prosecutor- for involuntary placement cases,*** in order to contribute to the proper implementation of the provisions of Law 2071.
- Furthermore, ***the NCHR suggests the immediate division of mental health services into sectors.*** In spite of being provided by art. 3 of Law 2716/1999, the sector committees have not yet been established, or they have been established but have not functioned, or they have functioned without taking actions.
- ***In order to face acute cases, the NCHR recommends the development of special training programs for the nursing staff on counseling and dealing with crisis.***
- **The NCHR also recommends** that police officers dealing with mentally ill people during involuntary placement be trained for "Crisis Intervention" programmes. ***The NCHR wishes to reiterate its proposal for a revision of the police training on human rights protection.***
- ***Finally, the NCHR recommends the establishment of an independent administrative authority, which will be responsible for examining the legality of involuntary placement cases at first grade, before the recourse to justice.***

C) Dysfunctions of the judicial protection system for incapacitated adults

Judicial protection for incapacitated adults was introduced by Law 2447/1996. Despite the fact that this institution aimed at the protection of the incapacitated person (in this case, the mentally ill person), its implementation encounters serious problems, due to the non-existence or the ill-function of the Social Services and Supervising Councils that are supposed to be part of the system of judicial protection.

According to article 1674 of Civil Code, the report of the Social Service is the basis on which the placement of a person under the system of judicial protection is decided by the Court. Mental Health Units patients (either hospitalized or in residence regime) often face insurmountable problems in dealing with some issues of their personal property due to the lack of a supportive family or social surrounding (or due to the indifference of the above). In some cases, the designation of a family member as the caretaker of the patient's belongings is not suitable. The judicial protection institutional model provides (in article 64a of Law 2447/1996, see article1671 of Civil Code) that for *"cases in which there is no appropriate person to be designated as 'judicial protector', judicial protection should be confided to a suitable association or foundation, especially founded on this purpose and possessing eligible personnel and infrastructure; otherwise (judicial protection should be confided to) the social service"*. However, Mental Health Units do not have the suitable personnel nor do they have the necessary infrastructure in order to undertake this responsibility. In result, there are often serious delays in administrating the mental patients' property affairs.

Therefore, the judicial protection framework is yet another set of provisions being annulled in practice (as is the case with Law 2071 on involuntary placement as well). The individuals to play the role of judicial 'guardian' are selected without the appropriate procedure and the social services are clearly dysfunctional.

The removal of a person's submission under judicial protection is also dysfunctional (article 1685 of Civil Code). Mentally ill people lose their legal capacity permanently in most of the cases, as the removal of this

measure rarely occurs. Furthermore, there should be special legal provisions for those mentally ill persons whose mental illnesses 'fluctuate', and thus not justifying a permanent removal of their legal capacity.

- ***The NCHR recommends the introduction of a flexible system that would be put into force through rapid procedures for the acute phases and would be inactive during the rest of the time.***
- ***All services provided by the present legal framework should operate properly so as to allow the implementation of the judicial protection measures for the mentally ill persons.***

D) Right of access to medical and administrative records of a mentally ill person

The Greek Ombudsman has received complaints by inmates of psychiatric units as regards their access to their own medical files, because hospital services refuse this access to them invoking medical confidentiality reasons.

However, paragraph 4 of article 47 of Law 2071/1992 provides for the full right of the patient to be informed about his/her mental health situation. Moreover, the Administrative Procedure Code provides for the right of every person concerned to take knowledge of administrative documents related to them, after submitting a written request. Furthermore, the right of access to personal data is stipulated in Article 12 of Law 2472/1997 (for the protection of the individual from personal data processing), while the Medical Ethics Code states that the psychiatrist has the obligation to provide full information to his patient. The access of a third person to the patient's medical file is only permitted to judicial and prosecuting authorities.

- ***All competent services should recognize and enforce legal provisions on the rights of the mentally ill person to access his/her own medical records Medical confidentiality is by definition meant vis-à-vis third persons, with an aim to protect the patient.***

E) Conditions of hospitalisation

The means and measures used for the treatment of the mentally ill persons are yet another area where the patient's rights are not respected. The abuse of the mechanical restraint and isolation, and the excessive use of sedative drugs are common to several mental sections of hospitals. It is reported, however, that due to non-compliance with the treatment protocols and to staff deficiencies, quasi all mental patients with simple symptoms of disorientation or hyperactivity are also submitted to these methods.

- ***The NCHR recommends that the Special Committee on the Rights of Persons with Mental Disorders carries out regular as well as unannounced visits.***
- ***The NCHR wishes to reiterate its proposal for the ratification of OPCAT, which would contribute to the avoidance of violations through a preventive system of visits carried out by a specialised body.***

VII. Conclusions

NCHR's findings and conclusions can be summarized as follows:

1. The process of the Psychiatric Reform initiated 20 years ago is incomplete. The important challenges should be acknowledged and it is certain that major improvements in the mental health field have indeed taken place. However, there are many mechanisms and instruments that are still to beestablished.
2. While the legal framework is generally adequate, there are many provisions that are not implemented, either due to omissions of the administrative authorities, or due to omissions of the judicial authorities.
3. The model of provision of mental health services remains medical-centered (and hospital-centered); there are not adequate prevention or

primary care services. This results in that fact that most of the mental health care system function only as a response to acute situations. Hospital care becomes the sole solution in practice.

4. The 'sectorisation' of mental health care services has not yet been carried out, while the network of outpatient services remain poor. As long as a community based service network is not in place, the mentally ill person will continue to be forced to rely on hospital care.

In order to deal with these problems:

- A revision of the PSYCHARGO program based on an independent evaluation of its progress is required.
- Implementation of division of health services (including mental health ones) into sectors is a total priority, in conjunction with the creation of a network of community based preventive and primary care services, as well as a network of mental health care services for children.
- Any confusion between "hospitalization" and "residence" of mental patients in both Public and Private legal entities should be clarified.
- The control of the quality and respect of patients' rights within private clinics should be part of the mandate of the Ministry of Health.
- It is essential to empower patients' groups. Experiences are personal but demands are collective. Furthermore, patients should have full information on their rights during (voluntary or involuntary) placement.
- It is also crucial to support the groups of patients' families.
- Training is essential not only for Prosecutors, but also for doctors dealing with cases of involuntary placement.
- Measures to combat stigmatization are a necessary component of state and local authority policies.
- It is also important to reinforce the operation of Social Entrepreneurship Groups of mental patients, which have proven to be helpful for the rehabilitation of the latter.

- An independent special institution for the control of the operation of mental health units should be established. The existing Special Committee on the Protection of Rights of People with Mental Disorders should perform regular and unannounced visits.
- Ratifications of CRPD and OPCAT are essential for obtaining institutional guarantees for the rights of mentally ill people.

More specifically, as regards incapacitated persons, the NCHR recommends:

- The amendment of Article 69 of Penal Code, in conjunction with Article 310 of Penal Procedure Code, so that in case of incapacitated persons committing misdemeanors or felonies, the judicial council will not exempt them from prosecution while ordering their placement, as is the case today, but will refer such persons to the competent court "with discharge reservation". Only this court should be mandated to order custody, after exempting incapacitated persons from the relevant penalty based on audience proceedings.
- The amendment of Articles 69 and 70 of Penal Code which set the "public safety", a vague and ambiguous term, as the only criterion for custody entrance and continuation. Legislation must subject custody to therapeutic principles and set explicitly (as done by Articles 95-99 of Law 2071/1992, regarding preventive involuntary placement) the existence of a particular disorder of incapacitated persons as the key condition of custody entrance and continuance. This particular disorder should be of a kind and/or extent of rendering them dangerous to society, in accordance with the basic principles set by relevant bodies and UN agencies, the fundamental provisions of the Constitution and the ECHR.
- Since the application of Articles 69 and 70 of Penal Code can lead in practice to long-term incarceration (even for the rest of the patient's life), the law should provide for custody and treatment maximum time limits, as well as the possibility to extend that limit, if that is necessary for their treatment, based on a court order.

- The court decision ordering custody (or continuance of custody) of incapacitated persons into treatment units should be subjected by law to appeal judicial review, available legal remedy to people under custody or treatment and their legal representatives, in accordance with the principles of CoE and the World Health Organization. In any case, and according to ECHR jurisprudence, the burden of proof on the need for custody continuation or incarceration shall be borne by the authorities and not the appellant. Moreover, the appeal judicial review must take place within an extremely short time, as is required by Article 5 par.4 ECHR.
- The incapacitated person should have explicitly the right to personal appearance at all stages of the process, not only in order to ensure individual and social rights provided under -inter alia- Articles 2§1, 5§1, 3 and 5, 21§3 and 25 § 1 of the Greek Constitution, but also to enable authorities investigating the matter to obtain a personal opinion of his/her mental and emotional situation. For these reasons, law should also provide for the obligation of the court to examine the incapacitated person in the place of his/her detention, if transfer in court has been, for any reason, proven impossible.
- Finally, a legal obligation of the court to ask on its own motion for the medical advice of two psychiatrists before ordering the continuance of his/her custody, is highly important (by analogy of Article 96 § 2 of Law 2071/1992). These psychiatric reports should constitute evidence justifying the custody court order.
- As regards this issue, the NCHR recommends the elaboration of a special hospitalization framework, which will form part of alternative correctional treatment, ensuring high quality treatment services.

Regarding involuntary placement:

- The NCHR recommends the establishment of a Special Prosecutor for involuntary placement cases -following the model of Minors Prosecutor-, so as to respect provisions of Law 2071 for the protection of the mentally ill person.

- In addition, the NCHR recommends the immediate implementation of division of mental health services into sectors.
- In order to deal with acute cases, staff –especially nursing staff- should undergo special training programs on counseling and crisis intervention.
- Police officers invited to deal with mentally ill people in acute phase within the framework of involuntary placement procedure, should be trained on "Crisis Intervention" programmes. The NCHR reiterates its proposal for a revision of the police training curriculum on human rights.
- Finally, the NCHR recommends the creation of an independent administrative body, which will be competent to examine at first grade the legality of involuntary placement, before recourse to justice.

Regarding judicial protection:

- The NCHR recommends the introduction of a flexible system that would be put into force through rapid procedures for the acute phases and would be inactive during the rest of the time.
- All services provided by the present legal framework should operate properly so as to allow the implementation of the judicial protection measures for the mentally ill persons.

Regarding the right to access medical and administrative files of the mentally ill person:

- All competent services should recognize and enforce legal provisions on the rights of the mentally ill person to access his/her own medical records Medical confidentiality is by definition meant vis-à-vis third persons, with an aim to protect the patient.