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REVIEW ARTICLE

CONTENTS

The right to psychiatric assistance in places of deprivation of liberty: european standards

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ABSTRACT

Aim: The article aims to deepen the scientific discussion on ensuring the right to psychiatric assistance in places of deprivation of liberty.

Materials and Methods: In preparing the article, the following were examined: the provisions of international legal instruments regulating adequate treatment of persons suffering from mental disorders; relevant legal positions of the European Court of Human Rights in this regard; and scholarly research within the outlined vector of scientific inquiry. The methodological basis of the study consists of dialectical, comparative-legal, systemic-structural, analytical, synthetic, and comprehensive methods.

Conclusions: The current case law of the European Court of Human Rights indicates that subparagraph "e" of paragraph 1 of Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms (lawful detention of persons of unsound mind) serves two protective functions: a social one (ensuring the protection of society) and a therapeutic one (providing the person with adequate treatment while in detention). The comprehensive concept of "adequate treatment of a person suffering from mental disorders" includes the following components: a) an individual treatment plan; b) an appropriate institution; c) the language in which the treatment is provided. Adequate treatment is an integral part of the concept of an "appropriate institution". The right to adequate treatment becomes illusory if there is a language barrier between the medical staff and the patient suffering from mental disorders.

KEY WORDS: adequate treatment, compulsory medical measures, criminal process, ECHR practice, mental disorder

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INTRODUCTION

Current case law shows that the provision of such care does not always comply with the requirements of Articles 3 and 5 of the European Convention on Human Rights (hereinafter – the Convention), leading to systemic violations of the Convention rights of persons suffering from mental disorders [1]. The authors' scholarly interest in examining this issue is driven by the fact that the Convention does not explicitly guarantee the right to adequate treatment for such persons, and therefore the interpretation of its provisions by the European Court of Human Rights (hereinafter – the ECHR) depends on the specific circumstances of each case.

AIM

The article aims to deepen the scientific discussion on ensuring the right to psychiatric assistance in places of deprivation of liberty.

MATERIALS AND METHODS

In preparing the article, the following sources were examined: the provisions of international legal instruments regulating adequate treatment of persons suffering from mental disorders; relevant legal positions of the ECHR regarding the observance of the Convention rights of persons suffering from mental disorders (an analysis was conducted of 18 judgments in which the ECHR addressed the issue of adequate treatment in the context of Article 3 of the Convention (prohibition of torture) and/or Article 5 of the Convention (right to liberty and personal inviolability)); and scholarly articles by domestic and foreign researchers on the protection of the rights of persons suffering from mental disorders. In addition, one of the co-authors (O. Tyshchenko), in the course of preparing the monograph *Criminal Proceedings Involving Persons Suffering from Mental Disorders*, conducted a survey via the Google Forms platform of

forensic psychiatric experts working in Odesa, Poltava, and Kharkiv branches of the State Institution "Institute of Forensic Psychiatry of the Ministry of Health of Ukraine" (20 respondents were surveyed) [2].

In the course of the study, a set of general scientific and specialized methods of cognition was used, including dialectical, comparative-legal, system-structural, analytical, synthetic, and comprehensive methods.

ETHICS

All sources used in this literature review are publicly available.

REVIEW AND DISCUSSION

The right of a person suffering from a mental disorder to liberty and personal inviolability is a Convention standard, which includes lawful detention of persons of unsound mind as one of the legitimate cases of deprivation of liberty (subparagraph "e" of paragraph 1 of Article 5 of the Convention) [1]. In the case law of the ECHR, three minimum conditions are clearly distinguished, without compliance with which a person cannot be considered "of unsound mind" and deprived of liberty: 1) the presence of a mental disorder must be established by an objective medical examination; 2) the mental disorder must be of a nature or degree warranting the compulsory confinement of the person in a psychiatric hospital; 3) the necessity of continued confinement in a psychiatric hospital depends on the persistence of such a disorder. These minimum conditions are traditionally known as the Winterwerp criteria (named after their original formulation in the Case of Winterwerp v. the Netherlands [3]), which the ECHR has repeatedly reaffirmed in a series of subsequent judgments (Case of Stanev v. Bulgaria [4]; Case of M. W. v. Poland [5]; Case of Akopyan v. Ukraine [6]; Case of Rooman v. Belgium [7]; Case of M. B. v. Spain [8]; Case of Kaganovskyy v. Ukraine [9], etc.). However, the dynamic development of case law introduces new emphases in this outlined field.

At the early stage of the development of case law in the field of protecting the rights of persons suffering from mental disorders, the ECHR held that the right to adequate treatment of a person did not arise from subparagraph "e" of paragraph 1 of Article 5 of the Convention. Thus, in the Case of Winterwerp v. the Netherlands, Mr. Winterwerp claimed that subparagraph "e" of paragraph 1 of Article 5 implied that every person deprived of liberty as "of unsound mind" has the right to necessary treatment. According to the applicant, his meetings with the psychiatrist were too brief and infrequent, and the medication provided to him contained too many tranquilizers. However, the ECHR recognized that the right of a person of unsound mind to treatment appropriate to their condition does not, in itself, arise from subparagraph "e" of paragraph 1 of Article 5 of the Convention [3]. The ECHR repeated a similar position in the Case of Ashingdane v. United Kingdom [10]. Later, the Human Rights Commission indicated that compulsory hospitalization in a psychiatric hospital indeed serves a dual function – therapeutic and social – but the Convention concerns only the social protective function, allowing, under certain conditions, the deprivation of liberty of a person suffering from a mental disorder (see the Human Rights Commission report on Case of Winterwerp v. Netherlands, Case of Ashingdane v. United Kingdom, Case of Dhoest v. Belgium) [7]. Thus, at that stage of case law development, the ECHR did not consider a violation of subparagraph "e" of paragraph 1 of Article 5 of the Convention to occur if a person was not provided with adequate treatment during compulsory hospitalization. Essentially, the key issue for the ECHR was whether the grounds for detaining a person suffering from mental disorders were lawful – that is, such detention must not be arbitrary.

Gradually, the ECHR expanded the scope of subparagraph "e" of paragraph 1 of Article 5 of the Convention, recognizing the close connection between the "lawfulness" of the detention of persons suffering from mental disorders and the appropriate nature of the treatment of their mental disorder (Case of Aerts v. Belgium, § 49 [11]; Case of Hutchison Reid v. the United Kingdom, § 55 [12]; Case of Ilnseher v. Germany, § 141 [13]). For example, in the Case of Rooman v. Belgium, the ECHR stated that any detention of persons suffering from mental disorders must have a therapeutic purpose aimed at treating or improving their mental health condition, including, where necessary, reducing or controlling the degree of danger posed [7]. Therefore, deprivation of liberty under subparagraph "e" of paragraph 1 of Article 5 of the Convention serves a dual function: a social function and a medical one, related to the individual interest of the person suffering from mental disorders in receiving proper and individualized therapy or course of treatment [7].

Thus, the current established position of the ECHR is that subparagraph "e" of paragraph 1 of Article 5 of the Convention (lawful detention of persons of unsound mind) serves two protective functions: a social function (ensuring the protection of society) and a therapeutic function (adequate treatment of the person while in detention). If the social function is fulfilled but the therapeutic function is not, the ECHR recognizes the absence of adequate treatment as a violation of subparagraph "e" of paragraph 1 of Article 5 of the Convention. When ex-

amining complaints under Article 3 of the Convention, the ECHR considers the totality of detention conditions and the inadequacy of medical treatment (Case of Miranda Magro v. Portugal, § 75 [14]; Case of Strazimiri v. Albania, § 158 [15]). It should be emphasized that the criteria distinguishing violations of these Articles are rather conditional. As rightly noted by ECHR Judge Nussberger, there must be a clearly identified aspect of inhuman or degrading treatment, which is not necessarily present in cases of violations of Article 5 of the Convention. Otherwise, the distinction between the protections provided under these two provisions of the Convention becomes blurred [16].

Given the significant importance that the ECHR attaches to the concept of "adequate treatment of a person suffering from mental disorders", it is appropriate to distinguish the following components, in particular: a) an individual treatment plan; b) an appropriate institution; c) the language in which the treatment is provided. Let us consider each of these in more detail.

INDIVIDUAL TREATMENT PLAN

The "Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care", adopted by UN General Assembly Resolution No. 46/119 of 17 December 1991, establish that persons serving prison sentences for criminal offenses, or persons otherwise subject to detention during judicial proceedings or investigations against them on criminal charges, who suffer from a mental illness or may suffer from one, shall receive the best possible mental health care (Principle 20 – Offenders). Care for each patient and their treatment is based on an individually developed plan, which is discussed with the patient, regularly reviewed, modified if necessary, and provided by qualified medical personnel (Principle 9 – Treatment) [17].

Recommendation No. REC(2004)10 of the Committee of Ministers of the Council of Europe to member states on the protection of the rights and dignity of persons suffering from mental disorders provides that states should implement measures to offer a range of quality services according to the mental health needs of persons with mental disorders, taking into account the differences in needs among various groups of such persons, and ensure equal access to these services (Article 10 – Provision of Health Care) [18]. Persons suffering from mental disorders receive treatment and care from qualified personnel based on an appropriate individual treatment plan. Whenever possible, the treatment plan is agreed upon with the individual, taking their opinion into account. The plan is regularly reviewed and updated if necessary (Part 1, Article 12 – General Principles of Treatment of Mental Disorders) [18]. The explanatory memorandum to this recommendation states:

"Paragraph 90: Paragraph one emphasises the importance of an appropriate individualised treatment plan. When a person has a mild mental disorder that is treated by a primary care physician, that plan may be simple and prepared in discussion between the doctor and the patient. In an emergency situation, the initial plan may be directed at resolving that situation, after which the plan will be further developed;

Paragraph 91: When a person is placed in a facility for treatment of his or her mental disorder, the treatment plan will be more complex. The treatment plan may also address behaviour arising as a consequence of the patient's mental disorder. Additional requirements for involuntary treatment plans are provided in Article 19.2. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has highlighted, in the context of involuntary placement, elements that they consider a treatment plan should contain. Such elements are also relevant to voluntary placements; therefore, a treatment plan should contain a wide range of therapeutic and rehabilitative activities, including, where appropriate:

* Pharmacotherapy;
* Occupational therapy;
* Group therapy;
* Individual psychotherapy;
* Rehabilitative activities relevant to daily living, for example concerning personal hygiene, shopping, cooking and use of public services;
* Art and drama;
* Music and sports;

Paragraph 93: Wherever possible, the treatment plan should be prepared in consultation with the person concerned. The aim is to enable the person to make informed decisions about his or her treatment plan in partnership with the clinical team. It may also be helpful to involve those close to the person in the preparation of the plan. If the person has the capacity to consent, and refuses consent to the clinical team contacting those close to him or her, this refusal should be respected. However, if those close to the person contact the clinical team and offer information relevant to the person's condition, this information can be accepted. Even if the person is too ill to be fully involved in the development of the plan, paragraph one makes clear that attempts should be made to establish his or her opinion and to take this into account" [19].

Based on the analysis of the above-mentioned documents, the importance of an individual treatment plan is beyond doubt; at the same time, the cited provisions are of a recommendatory nature. Accordingly, in its judg-

ments, the ECHR, while referring to the need to develop a treatment plan, uses more flexible terms such as "adequate and individual treatment", "whether an individual programme was implemented", "individual treatment proposals", "therapeutic treatment", "treatment plan", and "treatment programme". Some ECHR judges consider that these expressions do not correspond to a full treatment plan or a comprehensive treatment strategy tailored to the situation and needs of an involuntarily hospitalised patient [20]. As follows from the Case of Rooman v. Belgium, the use of synonymous terms does not prevent the ECHR from finding violations of Articles 3 and/or 5 of the Convention where it is established that the treatment provided to a person with a mental disorder was inadequate [7]. For example, in the Case of Miranda Magro v. Portugal, the ECHR emphasised that the level of care provided must go beyond basic assistance. Mere access to medical staff, consultations, and medication is insufficient for treatment to be considered adequate and satisfactory under Article 5 of the Convention. No therapeutic plan was provided for the applicant, nor were there any documents to that effect. Furthermore, given the applicant's state of health and particular vulnerability, the Court took into account the impact of detention on him, namely the aggravation of his state of confusion and fear due to the restrictive and anti-therapeutic environment of the prison [14]. The absence of a comprehensive programme of therapeutic measures aimed at treating an inmate suffering from mental disorders may be considered a "denial of treatment", which constitutes a violation of Article 3 of the Convention (Case of Strazimiri v. Albania, §§ 108–112) [15]. At the same time, in the Case of Rooman v. Belgium, the ECHR stressed that its role is not to analyse the content of the treatment proposed or provided. What is important is whether an individual treatment programme was implemented, taking into account specific information about the detainee's mental health, with the aim of preparing him or her for possible future reintegration into society. In this field, the Court grants national authorities an appropriate margin of appreciation regarding both the form and the content of medical care or treatment programmes [7]. The ECHR has repeatedly emphasised that the obligation to provide treatment is equally important in situations where the condition of the persons concerned may be considered incurable [7], particularly in cases involving the State's positive obligations under Article 2 of the Convention (right to life), which includes taking measures to protect the lives of those within its jurisdiction.

A PROPER INSTITUTION

In Recommendation No. R(83) 2 of 22 February 1983 concerning the legal protection of persons suffering from mental disorders and subject to involuntary placement, it is stated that involuntary placement means hospitalisation and detention for the treatment of a person suffering from a mental disorder in a hospital, other medical institution, or appropriate place; such detention is not voluntary on the part of the patient (part 2 of Article 1) [21]. The ECHR has also stressed that, regardless of the type of institution in which a person is held, they are entitled to adequate medical conditions accompanied by genuine therapeutic measures aimed at preparing them for possible release. The assessment of whether a particular facility is "adequate" must include an examination of the specific conditions of detention in that facility, particularly the treatment provided to persons with mental disorders. A facility that is *a priori* unsuitable (e.g., a structure within a prison) may still be considered satisfactory if it provides sufficient medical supervision. Conversely, a specialized psychiatric institution, which by definition should be appropriate, may fail to deliver the necessary treatment (Case of Rooman v. Belgium, §§ 199, 203) [7]. In a number of cases against Belgium, the ECHR found that the psychiatric wings of Belgian prisons were inadequate for the long-term detention of mentally ill persons, as they did not receive the care and treatment they required in those conditions. This lack of appropriate care deprived detainees of any realistic prospect of rehabilitation, breaking the necessary link with the purpose – and thus the lawfulness – of detention, which resulted in a violation of Article 5 § 1 of the Convention [22]. Addressing a similar issue in the Case of Proshkin v. Russia, the ECHR noted that, before being transferred to a psychiatric hospital, the applicant had been held in a "cell for the mentally ill" in a pre-trial detention center. The authorities did not explain how the conditions in that cell differed from those in an ordinary detention cell. Furthermore, they did not assert that the applicant had been receiving ongoing medical care for his illness or that the detention conditions created a therapeutic environment. The Court found that the cell in which the applicant was held was not an appropriate facility for the detention of mentally ill persons [23].

The ECHR recognizes that it may be permissible to place a person temporarily in a facility not intended for patients with mental disorders, pending transfer to an appropriate institution, provided that the period of stay is not excessively long (Case of Pankiewicz v. Poland, §§ 44–45; Case of Brand v. the Netherlands, §§ 64–66). At the same time, the Court emphasises that significant delays in admission to a psychiatric hospital are linked to the untimely commencement of treatment, which can affect the eventual treatment outcome. It has found a six-month delay in placing a

person in a psychiatric hospital to be unacceptable in the absence of exceptional circumstances. In Case of Romanov v. Ukraine, the ECHR found no justification for the applicant's prolonged detention in a pre-trial detention center (over two months) before his transfer to a specialized psychiatric facility, holding that this did not comply with the requirements of Article 5 § 1 of the Convention [24]. This finding aligns with the view of 100% of forensic psychiatric experts surveyed, who stated that delays in initiating treatment for mental disorders can negatively impact future treatment outcomes [2]. At the same time, decisions to transfer a person from a specialized facility for individuals with mental disorders to a regular prison environment must be made with great caution. For example, in Case of Haugen v. Norway, the ECHR noted that such a person was moved to a standard prison block where they were no longer under close supervision and had unrestricted access to objects suitable for suicide. Ultimately, they used these means to take their own life [25].

Thus, it can be concluded that, in the ECHR's understanding, adequate treatment is an integral part of the concept of an "appropriate institution". When determining the lawfulness of the detention of persons with mental disorders, the decisive factor for the Court is the level of adequate individual assistance provided to the person in the given facility, while the specific type of institution in which such assistance is delivered is of secondary importance.

THE LANGUAGE IN WHICH THE TREATMENT IS PROVIDED

The right to use a language understandable to the individual is explicitly provided for in Article 5(2) of the Convention (everyone who is arrested must be informed promptly, in a language they understand, of the reasons for their arrest and of any charges against them) and in Article 6(3) "e" of the Convention (everyone charged with a criminal offence who does not understand or speak the language used in court has the right to the free assistance of an interpreter) [1]. At the same time, the Convention contains no provision guaranteeing a person with a mental disorder who is in detention the right to receive treatment in their native language. In the Explanatory Memorandum to Article 7 ("Protection of vulnerable persons with mental disorders") of Recommendation No. REC(2004)10 of the Committee of Ministers of the Council of Europe to member states on the protection of the human rights and dignity of persons with mental disorders, attention is drawn to the linguistic factor as a means of conveying information related to treatment [19]. As noted above, an individual treatment plan includes consultations between the doctor and the patient, as well as individual and group therapy. Wherever possible, such a plan should be agreed with the patient during consultations. It is therefore evident that a language barrier effectively prevents the patient from receiving adequate treatment. In Rooman v. Belgium, the ECHR concluded that, despite repeated findings by health and social welfare authorities regarding the need for the applicant to undergo psychiatric treatment in German to improve his condition and facilitate social reintegration, no such measures were taken. The Court thus found that the absence of individual treatment for 13 years hindered the applicant's potential for positive change – assuming such potential existed. Moreover, the ECHR stressed that overcoming the language barrier was feasible since the patient spoke German, one of Belgium's official languages [7]. By contrast, ECHR Judge Nussberger took the view that the status of a language (whether an official language or a protected minority language) cannot be a factor in assessing the absolute right guaranteed by Article 3 of the Convention. What matters are the individual's suffering; if the applicant had spoken Swahili or Pashto, the judgment would have been the same [17]. Thus, the right to adequate treatment becomes illusory when a language barrier exists between medical personnel and a patient with a mental disorder.

The issue of safeguarding the rights of persons with mental disorders has attracted the scholarly attention of both legal and medical researchers. In criminal procedural scholarship, the most thoroughly developed area concerning the participation of persons with mental disorders in criminal proceedings is the procedure for applying compulsory medical measures to them (V. Kyrychenko [26], D. Kozariichuk [27], V. Pechko [28], H. Teteriatnyk [29], S. Sharenko [30], etc.). Certain aspects of this topic have been addressed in the academic works of I. Hloviuk, V. Hryniuk, and S. Kovalchuk, who examined the application of compulsory hospitalization of persons with mental illnesses in Ukraine's criminal proceedings in the context of ECHR case law [31]. The legal positions of the ECHR regarding the lawfulness of depriving persons with mental disorders of their liberty have been analyzed by V. Zavtur [32]. An analytical study of ECHR practice in the protection, safeguarding, and realization of human rights in the field of psychiatry has been conducted by I. Seniuta [33]. The issues related to ensuring the rights of persons suffering from mental disorders have been examined by various foreign scholars, including Marie Claire Van Hout, Ruth Kaima, Victor Mhango, Stephanie Kewley, Triestino Mariniello [34]; Bălăşoiu, Adriana-Florina [35]; Peter Verbeke, Gert Vermeulen, Tom Vander Beken, Michaël Meysman [36]; Anna Nilsson [37]; Forrester A., Till A., Simpson A., Shaw

J. [38]; Hopkin G., Evans-Lacko S., Thornicroft G. [39]; Picazo, Miriam Fernández [40]; Nathan, Rajan (Taj); Taylor, Paul; Powell, Jason; Morley, Sharon [40]; etc. [41, 42].

Despite the significant volume of work, some aspects of the appropriate treatment of persons suffering from mental disorders and participating in criminal proceedings remain debatable. This article, through the prism of international standards and the case law of the ECHR, examines certain components of the concept of "appropriate treatment" of persons suffering from mental disorders and participating in criminal proceedings under conditions of restriction of freedom (individual treatment plan; appropriate institution; language in which treatment is provided). However, this list is not exhaustive, which indicates the prospects for further research in this area.

CONCLUSIONS

1. The current practice of the ECHR shows that subparagraph "e" of paragraph 1 of Article 5 of the Convention (lawful detention of persons of unsound mind) serves two protective functions: a social function (ensuring the protection of society) and a therapeutic function (providing proper treatment to the person while in detention). If the social function is fulfilled but the therapeutic one is not, the ECHR considers the absence of proper treatment to be a violation of subparagraph "e" of paragraph 1 of Article 5 of the Convention.
2. The concept of "proper treatment" is a complex one, which includes, in particular, the following components:
   a) an individual treatment plan;
   b) an appropriate facility;
   c) the language in which the treatment is provided.
3. An individual treatment plan is an important component of proper treatment for a person suffering from mental disorders and deprived of liberty. The absence of a comprehensive plan of therapeutic measures aimed at treating a detainee with mental disorders may be considered a "refusal of treatment", which constitutes a violation of Article 3 and/or Article 5 of the Convention. The obligation to provide treatment is equally important in situations where the condition of the individuals concerned may be regarded as incurable.
4. Proper treatment is an integral part of the concept of an "appropriate facility". When deciding on the lawfulness of the detention of persons with mental disorders, the ECHR considers the level of proper individual assistance provided in the relevant facility as the key factor, and the specific type of facility where such assistance is provided as secondary.
5. The right to proper treatment is illusory if there is a language barrier between medical staff and a patient suffering from mental disorders. The function of dialogue between the patient and their doctor in a language they both understand becomes of crucial importance.

REFERENCES

1. Konventsiia pro zakhyst prav liudyny i osnovopolozhnykh svobod : vid 04 lystop. 1950 r. (zi zminamy ta dopov., vnes. Protokolamy) [Convention for the Protection of Human Rights and Fundamental Freedoms: from 04 Nov. 1950 (with amendments and addenda, introduced by Protocols)]. Official Gazette of Ukraine. 2006;32(2371). (Ukrainian)
2. Tyshchenko O. Kryminalne provadzhennia za uchastiu osib, yaki strazhdaiut na psykhichni rozlady [Criminal proceedings with the participation of persons suffering from mental disorders]. 2024, p.688. (Ukrainian)
3. Case of Winterwerp v. the Netherlands, application no. 6301/73, judgment of the ECHR of 24 Oct. 1979. http://hudoc.echr.coe.int/eng?i=001–57597 [Accessed 04 June 2025]
4. Case of Stanev v. Bulgaria, application no. 36760/06, judgment of the ECHR of 17 Jan. 2012. https://hudoc.echr.coe.int/eng?i=001–108690 [Accessed 04 June 2025]
5. Case of M. B. v. Poland, application no. 34091/96, judgment of the ECHR of 27 Apr. 2004. https://ips.ligazakon.net/document/ES003721 [Accessed 04 June 2025]
6. Case of Akopyan v. Ukraine, application no. 12317/06, judgment of the ECHR of 5 June, 2014, final 05/09/2014. https://hudoc.echr.coe.int/rus?i=001-144358 [Accessed 04 June 2025]
7. Case of Rooman v. Belgium, application no. 18052/11, judgment of the ECHR of 31 Jan. 2019. https://hudoc.echr.coe.int/eng?i=001-189902 [Accessed 04 June 2025]
8. Case of M. B. v. Spain, application no. 38239/22, judgment of the ECHR of 6 Feb. 2025. https://hudoc.echr.coe.int/eng?i=001-241578 [Accessed 04 June 2025]
9. Case of Kaganovskyy v. Ukraine, application no. 2809/18, judgment of the ECHR of 15 Sep. 2022. https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-219200%22]} [Accessed 04 June 2025]
10. Case of Ashingdane v. United Kingdom, application no. 8225/78, judgment of the ECHR of 28 May 1985. https://hudoc.echr.coe.int/ukr?i=001-57425 [Accessed 04 June 2025]

11. Case of Aerts v. Belgium, application no. 8225/78, judgment of the ECHR of 30 July 1998. URL: https://hudoc.echr.coe.int/ukr?i=001-57425 [Accessed 04 June 2025]
12. Case of Hutchison Reid v. the United Kingdom, application no. 50272/99, judgment of the ECHR of 20 Feb. 2003, final 20/05/2023. https://hudoc.echr.coe.int/fre?i=001-60954 [Accessed 04 June 2025]
13. Case of Ilnseher v. Germany, applications nos. 10211/12 and 27505/14, judgment of the ECHR of 04 Dec. 2018. https://hudoc.echr.coe.int/eng?i=001-187540 [Accessed 04 June 2025]
14. Case of Miranda Magro v. Portugal, application no. 30138/21), judgment of the ECHR of 09 Jan. 2024. https://hudoc.echr.coe.int/eng?i=001-229894 [Accessed 04 June 2025]
15. Case of Strazimiri v. Albania, application no. 34602/16, judgment of the ECHR of 21 Jan. 2020, final 21/05/2020. https://hudoc.echr.coe.int/eng?i=001-200452 [Accessed 04 June 2025]
16. Case of Rooman v. Belgium, application no. 18052/11, judgment of the ECHR of 31 Jan. 2019. https://hudoc.echr.coe.int/eng?i=001-189902 [Accessed 04 June 2025]
17. Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care: adopted by UNGA resolution 46/119 on 17 Dec. 1991. Refworld. https://www.refworld.org/docid/3ae6b3920.html [Accessed 04 June 2025]
18. Recommendation No. Rec (2004)10 Concerning the protection of the human rights and dignity of persons with mental disorder and its Explanatory Memorandum: adopted by Committee of Ministers on 22 Sept. 2004. Council of Europe. https://rm.coe.int/rec-2004–10-eme/168066c7e1 [Accessed 04 June 2025]
19. Explanatory Memorandum to Recommendation Rec (2004)10 of the Committee of Minister to member states concerning the protection of the human rights and dignity of persons with mental disorder. chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://rm.coe.int/rec-2004-10-em-e/168066c7e1 [Accessed 04 June 2025]
20. Joint partly dissenting opinion of judges Turković, Dedov, Motoc, Ranzoni, Bošnjak and Chanturia. Case of Rooman v. Belgium, application no. 18052/11, judgment of the ECHR of 31 Jan. 2019. https://hudoc.echr.coe.int/eng?i=001-189902 [Accessed 04 June 2025]
21. Recommendation of the Committee of Ministers to the member states concerning the legal protection of persons suffering from mental disorder placed as involuntary patients. R(83)2 of 22 February 1983. https://hrlibrary.umn.edu/instree/coerecr83.html [Accessed 04 June 2025]
22. Annual Report. European Court of Human Rights 2019. Chapter 2 Case-law overview. 2019; 83.
23. Case of Proshkin v. Russia, application no. 28869/03, judgment of the ECHR of 7 Febr. 2012, final 09/07/2012. http://hudoc.echr.coe.int/eng?i=001–108961 [Accessed 04 June 2025]
24. Case of Romanov v. Ukraine, application no. 76273/11, judgment of the ECHR of 28 May 2020. https://zakon.rada.gov.ua/laws/show/974_f10#Text [Accessed 04 June 2025]
25. Case of Haugen v. Norway, application no. 59476/21, judgment of the ECHR of 15 Oct. 2024, final 17/03/2025. https://hudoc.echr.coe.int/eng?i=001-237292 [Accessed 04 June 2025]
26. Kyrychenko V.L. Kryminalne provadzhennia shchodo zastosuvannia prymusovykh zakhodiv medychnoho kharakteru [Criminal proceedings regarding the application of compulsory measures of a medical nature]: dissertation. ... Dnipro. 2020, p.314. (Ukrainian)
27. Kozariichuk DV. Zabezpechennia prav osoby u kryminalnomu provadzhenni shchodo zastosuvannia prymusovykh zakhodiv medychnoho kharakteru [Ensuring the rights of individuals in criminal proceedings regarding the application of compulsory medical measures]. Dissertation. Candidate of Legal Sciences. Kyiv. 2021, p.211. (Ukrainian)
28. Pechko VV. Instytut zastosuvannia prymusovykh zakhodiv medychnoho kharakteru v kryminalnomu protsesi Ukrainy [Institute of application of compulsory medical measures in the criminal procedure of Ukraine]. Dissertation. Doctor of Philosophy. Mariupol. 2021, p.207. (Ukrainian)
29. Teteriatnyk HK. Okhorona prav i zakonnykh interesiv neosudnykh i obmezheno osudnykh na stadii dosudovoho rozsliduvannia u kryminalnomu protsesi Ukrainy [Protection of the rights and legitimate interests of unconvicted and limitedly convicted persons at the stage of pre-trial investigation in the criminal process of Ukraine]. Dissertation. Candidate of Legal Sciences. Donetsk. 2012, p.226. (Ukrainian)
30. Sharenko SL. Kryminalno-protsesualni problemy zastosuvannia prymusovykh zakhodiv medychnoho kharakteru [Criminal procedural problems of applying coercive measures of a medical nature]. Kharkiv. 2002, p.208. (Ukrainian)
31. Hloviuk IV, Hryniuk VO, Kovalchuk SO. Zastosuvannia prymusovoi hospitalizatsii psykhichno khvorykh osib u kryminalnomu provadzhenni Ukrainy v konteksti praktyky Yevropeiskoho sudu z prav liudyny [The use of forced hospitalization of mentally ill persons in criminal proceedings in Ukraine in the context of the practice of the European Court of Human Rights]. Porivnyal'ne ta analitychne pravo. 2020;1:524–528. doi: 10.32782/2524–0390/2020.1.131. (Ukrainian) DOI
32. Zavtur VA. Normatyvne zabezpechennia prava na svobodu ta osobystu nedotorkannist u kryminalnomu provadzhenni shchodo zastosuvannia prymusovykh zakhodiv medychnoho kharakteru (chastyna 1) [Normative provision of the right to freedom and personal integrity in criminal proceedings regarding the application of compulsory medical measures (part 1)]. Elektronnyy naukovo-pravovyy zhurnal. 2022;7:374–378. doi: 10.32782/2524–0374/2022–7/90. (Ukrainian) DOI

33. Seniuta I. Yurydychne zabezpechennia prav osib z psykhichnymy rozladamy v mistsiakh nesvobody: analit. doslidzh. z urakhuvanniam reformy okhorony psykhichnoho zdorovia [Legal protection of the rights of persons with mental disorders in places of detention: analytical research taking into account the reform of mental health care]. Kyiv. 2022, p.97. https://rm.coe.int/report-psychiatry-2022-web/1680a63357 [Accessed 04 June 2025] (Ukrainian)
34. Van Hout MC, Kaima R, Mhango V et al. Judiciarisation of the mentally ill and/or mentally incapacitated in the Malawi criminal justice system: Gaps and flaws of human rights protection. Forensic Science International: Mind and Law. 2023;4:100121. doi:10.1016/j.fsiml.2023.100121. DOI
35. Bălăşoiu A-F. Some clarifications regarding the protection of the natural person by judicial interdict and the protection of persons with mental disorders in the context of the legislative changes brought by Law no. 140/2022 from the perspective of the right to respect for private and family life, provided by the European Convention on Human Rights. Revista de Stiinte Politice. 2024;82(06):47.
36. Verbeke P, Vermeulen G, Vander Beken T, Meysman M. Protecting the fair trial rights of mentally disordered defendants in criminal proceedings: exploring the need for further EU action. Int J Law Psychiatry. 2015;41:67-75. doi: 10.1016/j.ijlp.2015.03.009. DOI
37. Nilsson A. Compulsory mental health interventions and the CRPD: Minding Equality. 2021, p.186.
38. Forrester A, Till A, Simpson A, Shaw J. Mental illness and the provision of mental health services in prisons. Br Med Bull. 2018;127(1):101–109. doi: 10.1093/bmb/ldy027. DOI
39. Hopkin G, Evans-Lacko S, Forrester A et al. Interventions at the transition from prison to the community for prisoners with mental illness: a systematic review. Adm Policy Ment Health. 2018;45(4):623-634. doi: 10.1007/s10488-018-0848-z. DOI
40. Picazo M.F. Theory of positive state obligations under article 2.1 of the convention to protect the lives of persons with mental disorders in state psychiatric institutions. analysis of ecthr case-law. Revista de derecho político. 2024;01(119):291–314.
41. Rajan (Taj) N, Taylor P, Powell J, Morley S. Mental health and the criminal courts: Fitness to plead, culpability and the defence of insanity. Mental Health and Punishments. 2021, pp. 19–32.
42. Studies from University of Warsaw Yield New Data on Mental Disorders. The Notion of 'a Person of Unsound Mind' Under Article 5 /n 1(E) of the European Convention On Human Rights. Mental Health Weekly Digest. 2021, p.826.

CONFLICT OF INTEREST
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