European Mental Health Laws, Social Inclusion and Fundamental Rights

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Studies on Law and Coercion in European Psychiatry
funded by DG Sanco


- Forensic Care: *Placement and Treatment of Mentally Ill Offenders – Legislation and Practice in European Union Member States* (2002-2004)

Regulation for Civil Detention
Involuntary placement of mentally ill – annual frequencies

- Austria
- Belgium
- Denmark
- Finland
- Ireland
- Luxembourg
- Portugal
- England
- Sweden
- France
- Germany
- Italy
percentage of involuntary placements on all inpatient episodes in psychiatric facilities

* The Netherlands: admissions to psychiatric hospitals only
Luxembourg: percentage refers to the country’s only hospital treating involuntary patients
• involuntary placements correlate with the overall trend in general mental health care in Europe (more frequent episodes due to decreasing lengths of stay)

• no overall indication for an increasing coercion during the 1990s, although rates vary considerably between Member States

• But the variety of legal regulations contributing to this rates needs to be analysed closer, in how far they safeguard of violate fundamental rights
# Main Criteria for Involuntary Placement in European Mental Health Laws

## Mental Disorder

<table>
<thead>
<tr>
<th>plus Threat/Danger</th>
<th>Austria</th>
<th>Belgium</th>
<th>France</th>
<th>Germany</th>
<th>Luxembourg</th>
<th>Netherlands</th>
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</thead>
<tbody>
<tr>
<td>plus Threat/Danger or Need for Treatment</td>
<td>Denmark</td>
<td>Finland</td>
<td>Greece</td>
<td>Ireland</td>
<td>Portugal</td>
<td>England &amp; Wales</td>
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<tr>
<td>plus Need for Treatment</td>
<td>Italy</td>
<td>Spain</td>
<td>Sweden</td>
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</table>
Percentages of Males among Involuntary Placed Persons

- Belgium 1997: 68.8%
- Denmark 2000: 52.2%
- Finland 1999: 52.1%
- France 1998: 69%
- Ireland 1999: 61.4%
- Luxembourg 2000: 62.7%
- The Netherlands 1997: 68.5%
- Sweden 1997: 50%
- United Kingdom 1999: 50.9%
## Criteria – Mental Disorders

<table>
<thead>
<tr>
<th>Specified by Law</th>
<th>Not Specified by Law</th>
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<tbody>
<tr>
<td>Denmark</td>
<td>Austria</td>
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<tr>
<td>Germany</td>
<td>Belgium</td>
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<tr>
<td>Ireland</td>
<td>Finland</td>
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<td>England &amp; Wales</td>
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<td>Sweden</td>
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</tbody>
</table>
## Legal Distinction between Involuntary Placement and Treatment

<table>
<thead>
<tr>
<th>distinct modalities</th>
<th>not separated</th>
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</thead>
<tbody>
<tr>
<td>Austria</td>
<td>Belgium</td>
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<tr>
<td>Denmark</td>
<td>Finland</td>
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<tr>
<td>Germany</td>
<td>France</td>
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<td>Netherlands</td>
<td>Ireland</td>
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<tr>
<td>Sweden</td>
<td>Italy</td>
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<tr>
<td>England &amp; Wales</td>
<td>Portugal</td>
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<tr>
<td></td>
<td>Spain</td>
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</tbody>
</table>
Independent Counsel / Patient Advocate

- Mandatory 40%
  (Austria, Belgium, Denmark, Ireland, Netherlands, Portugal)
- Not mandatory 60%
Assessment of Mental State by

- trained psychiatrist
  - Austria
  - Greece
  - Ireland
  - Luxembourg
  - Netherlands*
  - Portugal
  - Spain
  - Sweden*
  - United Kingdom*

- any physician
  - Belgium
  - Denmark
  - Finland*
  - France*
  - Germany*
  - Italy

• Finland: preliminary assessment: any physician, hospital assessment: psychiatrist
• France: HO-procedure: any physician
• Germany: physician in some federal states, psychiatrist or “physician experienced in psychiatry” in others
• The Netherlands: physician only in case of emergency
• Luxembourg: two required, one can be a physician, other must be a psychiatrist
• Sweden: two required, one can be a physician, other must be a psychiatrist
• United Kingdom: two required, one can be a physician, other must be a psychiatrist
Emergency Procedures: Max. Length of Short-Term Detention

- Austria: 2 days
- Belgium: 10 days
- Denmark: No emergency procedure
- Finland: No emergency procedure
- France: 2 days
- Germany: 3 days
- Greece: 2 days
- Ireland: No emergency procedure
- Italy: 2 days
- Luxembourg: 1 day
- Netherlands: 1 day
- Portugal: 2 days
- Spain: 1 day
- Sweden: 1 day
- England & Wales: 3 days
Maximum Length of Initial (Regular) Placement

- **AUSTRIA**: 3 months
- **BELGIUM**: 24 months, not legally defined, reassessment monthly
- **DENMARK**: not legally defined, reassessment monthly
- **FINLAND**: 9 months
- **FRANCE**: not legally defined, reassessment monthly
- **GERMANY**: 12 months
- **GREECE**: 0.75 months
- **IRELAND**: 0.25 months
- **ITALY**: not legally defined, reassessment after 2 months
- **LUXEMBOURG**: not legally defined, reassessment after 6 months
- **NETHERLANDS**: 12 months
- **PORTUGAL**: not legally defined, reassessment monthly
- **SPAIN**: not legally defined, reassessment monthly
- **SWEDEN**: 1 month
- **ENGLAND & WALES**: 6 months
Option: Compulsory Outpatient Treatment

- Mentioned in law: 26.7%
  (Belgium, Luxembourg, Portugal, Sweden)
- Not mentioned in law: 73.3%
Disorders of Involuntary Placed Patients

- Belgium 1998
- Denmark 2000
- Finland 1999
- France 1998
- Ireland 1999
- The Netherlands 1997

- Dementia + organic p.
- Affective disorder
- Substance abuse
- Psychosis
- Others
Mental health laws and practices regarding involuntary placement and treatment of mentally ill vary remarkably across Europe.

Laws are often not in line with current standards of mental health care and do hardly provide clear guidelines for decision making.

Fundamental right protection may be increased in various aspects:
- clear definition of criteria
- usage of professional diagnostic terminology
- definition and training of experts for assessment and decision making
- time frames for emergency and re-assessment procedures
- inclusion of patient counsel
- appropriate service provision
- health reporting standards
Mentally Disordered Offenders

- Forensic Legislation and Care
### Number of specified Beds in Forensic Care (1998-2003)

<table>
<thead>
<tr>
<th>Country</th>
<th>No. of beds</th>
<th>Additional capacity in general psychiatry</th>
<th>Prison placement due to shortage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
<td>384</td>
<td>yes (incl.)</td>
<td>no</td>
</tr>
<tr>
<td>Belgium</td>
<td>1,061</td>
<td>yes (not incl.)</td>
<td>yes</td>
</tr>
<tr>
<td>Denmark</td>
<td>250</td>
<td>yes (not incl.)</td>
<td>unknown</td>
</tr>
<tr>
<td>England &amp; Wales</td>
<td>3,200</td>
<td>yes (not incl.)</td>
<td>no</td>
</tr>
<tr>
<td>Finland</td>
<td>360</td>
<td>yes (incl.)</td>
<td>unknown</td>
</tr>
<tr>
<td>France</td>
<td>486</td>
<td>yes (not incl.)</td>
<td>yes</td>
</tr>
<tr>
<td>Germany</td>
<td>7,123</td>
<td>yes (not incl.)</td>
<td>yes</td>
</tr>
<tr>
<td>Greece</td>
<td>250 – 330</td>
<td>yes (incl.)</td>
<td>yes</td>
</tr>
<tr>
<td>Italy</td>
<td>1,282</td>
<td>no</td>
<td>no</td>
</tr>
<tr>
<td>Ireland</td>
<td>80</td>
<td>yes (not incl.)</td>
<td>unknown</td>
</tr>
<tr>
<td>The Netherlands</td>
<td>1,304</td>
<td>yes (not incl.)</td>
<td>yes</td>
</tr>
<tr>
<td>Portugal</td>
<td>189</td>
<td>no</td>
<td>no</td>
</tr>
<tr>
<td>Spain</td>
<td>593</td>
<td>yes (not incl.)</td>
<td>no</td>
</tr>
<tr>
<td>Sweden</td>
<td>713</td>
<td>yes (incl.)</td>
<td>unknown</td>
</tr>
</tbody>
</table>
Availability of Forensic Outpatient Facilities

available in
Austria, Belgium, Germany, The Netherlands

not available in 11 Member States
Maximum Time Frames for Pre-trial Placement

- **IRELAND**: 28 days
- **NETHERLANDS**: 106 days
- **GREECE**: 6 months
- **GERMANY**: 12 months
- **PORTUGAL**: 12 months

Not specified:
- Austria
- Belgium
- Denmark
- England & Wales
- Finland
- France
- Italy
- Luxembourg
- Spain
- Sweden
Conclusions

- Forensic service provision is extremely varying (in quality or quantity), although hard to evaluate and compare
- under-provision with specialized services is common
- Major fundamental right concerns include
  - a “forensification” of difficult to treat (non-offendering) mentally ill
  - to avoid trans-institutionalization of forensic patients into prisons or jails due to lacking capacities in the specialized forensic sector