

Correspondence: Beatrice IOAN
Institute of Forensic Medicine Iasi,
No. 4 Buna Vestire street, 700455, Iasi, Romania
E-mail: ioanbml@yahoo.com

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ETHICS, HUMAN RIGHTS AND LAW IN THE ROMANIAN PSYCHIATRY

**Beatrice IOAN, Călin SCRIPCARU, Tatiana IOV,
Irina STREBA, Simona IONESCU, Simona DAMIAN**

Beatrice IOAN: M. D., Ph. D., Associated Professor, Department of forensic medicine, "Gr. T. Popa" University of Medicine and Pharmacy, Romania; Senior forensic pathologist, Institute of Forensic Medicine Iasi, Romania

Călin SCRIPCARU: M. D., Ph. D., Professor, Department of Psychology, "Stefan cel Mare" University of Suceava, Senior forensic pathologist, Institute of Forensic Medicine Iasi, Romania

Tatiana IOV: M. D., Ph. D., Senior forensic pathologist, Institute of Forensic Medicine Iasi, Romania

Irina STREBA: M. D., Ph. D., Postdoctoral researcher, "Gr. T. Popa" University of Medicine and Pharmacy of Iasi, Senior forensic pathologist, Institute of Forensic Medicine Iasi, Romania

Simona IONESCU: M. D., Ph. D., Postdoctoral researcher, "Gr. T. Popa" University of Medicine and Pharmacy of Iasi; Senior forensic pathologist, Institute of Forensic Medicine Iasi, Romania

Simona DAMIAN: M. D., Ph. D., Postdoctoral researcher, "Gr. T. Popa" University of Medicine and Pharmacy of Iasi, Assistant Professor, Department of forensic medicine, "Gr. T. Popa" University of Medicine and Pharmacy, Iasi, Romania; Senior forensic pathologist, Institute of Forensic Medicine Iasi, Romania

ABSTRACT:

Medical ethics and human rights have been neglected in the field of psychiatry in Romania during the communist regime, this situation having been facilitated mainly by a permissive legislation for abuse. Romanian medical practice after 1989 has changed, at least in terms of legislation, by moving from medical paternalism to individual autonomy, whereby patients have the right to make autonomous decisions based on information received from their physicians. Legislation in the field of psychiatry also changed in order to promote ethical principles and patients' rights. In this paper, the authors analyze from an ethical and human rights perspective the psychiatric practice during the communist regime and then discuss about the current legislative framework in the Romanian psychiatry, how it manages to promote ethics and patients' rights and the issues arising from the application in practice of current legislation.

Keywords: psychiatry, ethics, human rights, legislation

REZUMAT:

Etica medicală și drepturile omului au fost neglijate în domeniul psihiatriei în România în timpul regimului comunist, această situație fiind facilitată în special de o legislație permisivă în ceea ce privește abuzul. Practica medicală românească de după 1989 s-a schimbat, cel puțin din punctul de vedere al legislației, prin trecerea de la paternalismul medical la autonomia individuală, prin care pacienții au dreptul să ia decizii autonome, bazate pe informațiile primite de la medicii lor. Legislația în domeniul psihiatriei s-a schimbat, de asemenea, cu scopul de a promova principii etice și drepturile pacienților. În această lucrare, autorii analizează, într-o perspectivă etică și a drepturilor omului, practica psihiatrică din timpul regimului comunist, apoi discută despre contextul legislativ curent în psihiatria românească, cum reușește aceasta să promoveze etica și drepturile pacienților și problemele care apar în urma aplicării practice a legislației curente.

Cuvinte-cheie: psihiatrie, etică, drepturile omului, legislație

Ethics and human rights in psychiatry during the communist regime

Universal Declaration of Human Rights (UN, 1948) recognizes “equal and inalienable rights of all members of the human family” as the very foundation of “freedom, justice and peace in the world”. The Declaration stipulates rights that can be negative or positive according to the need for the state’s intervention for their fulfillment. Negative or “natural” rights, such as the right to life or the right to liberty, cannot exist without the state’s intervention, although it is desirable to minimize the state’s intervention as much as possible in order to increase the degree of freedom of citizens. In contrast, fulfillment of the positive rights, such as the right to healthcare, the right to education or the right to property is subject to state’s intervention. During the communist regime, positive rights were usually politically imposed and emphasis was placed on positive rights, especially the economic ones and the major interventions of the state in people’s lives were used to hide serious violations of their negative rights.

In communist countries, hospitals were considered “health factories” in which professionals’ work was evaluated according to the number of beds, number of patients treated and endowment of hospitals, without taking into account aspects such as age, gender, patients’ personal characteristics or the inevitable problems that could occur during the medical activity. This approach strictly bureaucratic of the health services had a major contribution in the negligence of the issues of medical ethics and bioethics. [1]

An important role in maintaining this situation belonged to the communist medical education, where emphasis was placed on the ideologist sciences and not on the principles of medical ethics. Ideology was based on science, without seeking to explain the world but motivating their ideas, which allowed for scientific concepts to be manipulated so as to correspond to the specific of society at a certain time. [2]

Generally speaking, during the communist regime, medical ethics was considered insignificant and generally neglected, since the ultimate goal of the Communist Party was to create the socialist society in which the individual itself was not important. In communist society, the individual had no rights, and the party was to decide the fate of citizens. Science was, also, a subject to socialist ideology. Cult masses generated new principles that promoted adherence of all individuals to communism, the superiority of the socialist society and the inexorable progress of any society to socialism. It also introduced new morals, characterized by new principles derived from Marxist philosophy, in which the moral principles did not result from the inner transformations of the individual in contact with the new society, but the individual must conform artificially to meet the new principles. [3] Psychiatric ethics, in turn, became subject to new morals, so religious or political opposition was included in psychopathology and normality was reserved to the conformists, namely those who obeyed the requirements of communism. [3,4] For example, persistent ideas against the communist regime were diagnosed as paranoid behavior [4] The new morality favoured the so-called “aseptic” or medical repression (“political psychiatry”), which was intended to re-programming the minds of political dissidents and to mask the repressive regime, leading to serious breaches

of ethics and gradually discrediting this profession. [1,4]. In the communist society there was a double standard, consisting of polarization of what needed to be said and perception of reality, which favoured the institutionalization of lie to defeat freedom and dignity of individuals. [4]

Socialist ideology was focused on developing ideal society in which all citizens were equal and happy, so those opposing the regime could only be mad because there was no other logical explanation why a person would oppose the best political and social regime in the world. [6] It is suggestive in this respect, Nicolae Ceausescu's speech, addressed to students in the fall of 1965, in Bucharest, where he stated: "one might think that there are now in Romania social forces capable of endangering our socialist system? I think not. [...] Of course, there may be insane. [...] But for mad people our socialist society has the necessary means, including the straitjacket". [7]

A study by the International Association on the Political Use of Psychiatry (IAPUP) concluded that psychiatric abuse occurred systematically in Romania, and resulted in hundreds of victims. [6] In 1978, Amnesty International issued a report that was denouncing human rights violations in Romania, one of such methods being the abuse of psychiatry. It was estimated that the decade 1970 – 1979 was the "golden age" of psychiatric abuse in Romania. After 1980, due to the disclosure of data similar to those contained in the Amnesty International report, the frequency and severity of abuses decreased. [7]

The abuse in the Romanian psychiatry was based on two theoretical models, outdated scientifically, which were transformed into ideology and examples of application of dialectical materialism in psychiatry: the biological (medical) model, derived from the classic German psychiatry at the beginning of the twentieth century and the prison model of psychiatric facility, which rejected the idea of psychological and sociological inputs in the psychiatric therapy and accepted the idea of psychiatric asylum specific to the Middle Ages. [4]

The political abuse of psychiatry was organized by the communist state and was facilitated by a permissive legislation. [4]

The decree 12/1965 allowed for admission in a psychiatric facility of a person who pose a threat to him/herself or to others, based on statements by family members or neighbours, without the person having the possibility to appeal. [4, 7] The case was tried in court behind closed doors, without any evidence or defence. For people with mental disorders who have committed antisocial acts, Article 114 of the Penal Code adopted in 1969, stipulated their admission in a psychiatric facility until recovery. According to Article 166 of the Penal Code in the category of antisocial acts were also included "fascist propaganda or the propaganda against the socialist state" and "propaganda or any action taken to change the socialist system and the activities that may pose a threat to the security of the state". [7]

The law 3/1978 allowed the seizure of an individual in case of medical emergency [4, 7], which often turns into "political emergency". [4]

The decree 313/1980, enacted in response to criticism of the Decree 12/1965 and to mask political repression, allowed compulsory psychiatric treatment at the recommendation of a single psychiatrist. In this way, the imprisonment of political dissidents was delegated to medical profession. [4, 7] Often the psychiatric diagnosis of an undesirable individual was based on false and politically motivated testimony. [4]

Abusive admission in a psychiatric facility was the first step of psychiatric abuse, designed for the dissidents who conflicted the communist system, for various reasons, such as: a political act directed against the Communist Party, an insistent demand for emigration or attempt to enter into an embassy, religious activities or political complaints. [4]. The procedure usually started from the request by security for a psychiatric examination of the dissident to determine whether the individual's behavior was normal. In this way, the act of dissidence could be transformed by a psychiatrist in a serious medical condition such as paranoia or schizophrenia. [4, 8]

Living conditions under which domestic political dissidents were held in psychiatric facilities were often inhuman and of a degrading nature, clearly violating their rights: overcrowding, lack of basic hygiene conditions, restrictions and censorship of correspondence and visits, denying any

remedies or possibilities of legal protection, physical abuse (binding, application of electric shocks, beatings), lack of qualified personnel (the personnel in the psychiatric facilities was often recruited from among former inmates, mentally ill, alcoholics and so on), exerting moral pressure to induce changing political beliefs, mixing real sick individuals with dissidents, mixing people of different ages and cultures. [4] Often, these people were admitted to specific medical units in rooms that had bars on the windows and strict security as they were considered “dangerous patients”. [8]

Admission of political dissidents in psychiatric hospitals could be for varying periods of time, often short, usually before important events that could have been the occasion for expressions of opposition to the communist regime (such as congresses of the Communist Party or visits of Presidents of other countries). The forced hospitalization and treatment of the political dissidents were not based on medical recommendation and were not intended to promote their rights, but defending the public order of the totalitarian state. [7]

Ethics and Human Rights in the “transition” Romanian psychiatry

In December 1989, at the fall of the communist regime, the Romanian psychiatric community was demoralized and marginalized without real contact with international psychiatry and marked by an excessive accent placed on the biologic aspects of psychiatric diseases. [9]

In 1990, the Ministry of Health has established a panel of psychiatrists to investigate the reality of abuses in psychiatry during the communism. This commission worked for four years in the “Obregia” Hospital in Bucharest, during which it studied records of more than 60 patients, many of whom were recognized as cases of abuse and received financial compensations. After four years, the commission was dismissed, and the initiative was not resumed again. [7]

After 1989, the Romanian medical practice in general underwent, at least in terms of legislation, a radical transformation by shifting from medical paternalism to individual autonomy, whereby patients have the right to make autonomous decisions based on information received from their physicians.

Legislation in the field of psychiatry has turned itself, in line with the “international reality”, even if the law on mental health and protection of persons with mental disorders (Law 487/2002) was promulgated in Romania quite late, in 2002, and the implementing rules have been released only four years later. [9,10]

The law 487/2002 on mental health and protection of persons with mental disorders stems from the fact that the goals of care for persons with mental disorders are defending and strengthening their autonomy. Mental health services must be adapted to cultural and religious beliefs of patients and care must be provided in the least restrictive environment in order to be respected both the physical and mental integrity of the patients and the safety of others.

Under this law, mental health assessment of a patient can be done only with his/her informed consent or the consent of his/her personal representative, the non-clinical criteria such as non-conformity to the moral, social, cultural, political or religious dominant values in society, being irrelevant.

The patient has also to consent to treatment, unless there is a danger of harm to him/herself and others, as well as when the patient lacks the mental capacity to understand his/her medical condition and the need to be treated. In these cases, the decision is made by the patient’s legal representative or the doctor, by the virtue of the patient’s best interests, when his/her legal representative cannot be contacted.

Furthermore, the patient can withdraw his/her informed consent for examination and treatment at any time, except the hazard created by the unfavorable evolution of the psychiatric illness.

A very important provision of the law 487/2002 regards the non-voluntary hospitalization procedure, which is designed to protect the patient with mental disorders. This procedure can be initiated only after all the attempts to voluntary admission have failed, in the cases in which there is danger of injury to the patient or serious deterioration of his/her health.

Involuntary admission has a series of “filters” to verify its accuracy in terms of both procedural and medical aspects. This procedure can be initiated only by a psychiatrist and the Pro-

secutor's Office shall be notified within 24 hours. The patient or his/her legal representative has the right of an emergency appeal procedure against the non-voluntary hospitalization.

The law also creates a commission to review the procedure, formed of three members (two psychiatrists and a physician from a different field or a representative of the civil society), which is designed to periodically assess the patient's health. [11, 12]

From hospital care to community care

Since the 1960s, in many countries, the mental illness began to be evaluated from a sociological perspective, focusing on varied social, moral, and philosophical aspects, which gradually allowed for deinstitutionalization of psychiatry and community integration of patients with appropriate treatment.

Romanian psychiatry, following the experience of the western countries, also envisages the possibility of shortening the period of hospitalization, followed by integration of patients in community with the provision of due care.

The law 487/2002 provides for diversification of facilities and services in psychiatry, dividing them into hospitals and community facilities such as workshops and protected houses, rehabilitation and social reintegration centers. The law also provides for the development of specific models of community care. [11, 12]

A first step in the development of community psychiatry was made by local administrative reform, including the release of the local budget law, which allowed for decentralization and creation of the legislative and material background for local initiatives in various fields, including that of psychiatry. However, besides political approach it is necessary to build a communitarian mentality in citizens, so integration efforts in the community care of mentally ill patients are accepted. [10]

The law 487/2002 – the ideal solution to the ethical and human rights issues in the Romanian psychiatry?

Clearly, the law 487/2002 represented a significant advance in promotion of ethics and human rights in the field of psychiatry in Romania. However, its provisions and their practical reflection are not infallible.

The law imposes an informed consent model which unfortunately fails to protect the patient's autonomy. The model put together many important issues on which the patient has to be informed in order to provide consent. Also, the model contains some provisions which contradict the law 46/2003 on patient rights and the law 95/2006 on health care reform. [13, 14]. The model imposed by law can be considered a "blank check" offered by the patient to his/her physician as the patient authorizes the physician "to carry out all necessary investigations and diagnostic procedures in the legal context of a correct medical practice" [11], without asking for their explicit consignment or for obtaining the patient's consent for each of them. Moreover, the law introduces a quantification of the risk of diagnostic or therapeutic procedures, speaking about *in corpore* authorization by the patient for all the investigations and treatments with "low and medium risk". Exceptions are, by law, invasive procedures, which require that the patient will sign a separate document. The law, however, does not specify exactly how, in practice, the magnitude of risk can be quantified. As noted above, the model refers to several types of situations, referring to diagnostic methods, treatment, collection and storage of biological samples, participation in clinical education and taking photos, as, in fact, it is suggested since the title of the document: "Informed consent on investigations and therapeutic procedures and for participation in medical education". However the law does not mention the procedure to be followed if the patient refuses to consent to any of these issues. On biological material removed from his/her body, the patient should also sign a "blank check" as the model specifies that the biological material can be used for scientific purposes, without clearly mentioning them. The same approach is found in authorizing the material to be photographed and used for training purposes or published, in general terms, without specifying exactly to what refers this requirement. The patient does not have the right to refuse being photographed for medical docu-

mentation purposes, although this does not fit the situations provided by the law 95/2006 for non-voluntary shooting. [14] Far from being made a thorough analysis of the model of informed consent required by the law 487/2002, as it exceeds the purposes of this paper, we consider that it brings more confusion than protection of patient's autonomy in the psychiatric practice.

Under the same law, it is possible to involve civil society, including NGOs, to monitor the rights of psychiatric patients in hospitals where they are admitted to care. The law provides, for example, the fact that NGOs can actively contribute to protection of mental health and the rights and freedoms of persons with mental disabilities.

By virtue of these provisions, the Center for Juridic Resources monitored for one year the activity of 16 Romanian medical facilities for mentally ill patients. This research was followed by the publication of a report regarding the care provided to the patients, underlying the deficiencies that are likely to affect ethics and human rights in this field. A number of deficiencies were attributed to organizational problems, especially staff shortages and poor training of the existing staff.

The above mentioned report shows that in many cases the medical staff did not know the non-voluntary hospitalization procedure and disrespected the legal requirement to obtain informed consent. Many patients had no information about their rights, being observed violations of their right to correspondence and communication, as well as deficiencies in respecting the right of patients to lodge complaints. The report also details cases of lack of attention to the legal provision for people with mental disorders to be "treated with humanity and with respect for human dignity", generated by overcrowding, poor sanitary conditions and lack of privacy, these aspects being included into the category of "inhuman or degrading treatments". In addition, the monitoring team observed in some cases neglect or abandonment of patients in a state of inactivity, which hinders their treatment and further integration into community. [15]

CONCLUSIONS

Patients with psychiatric disorders are characterized by a double vulnerability, given, on one hand, the disease from which they suffer and, on the other hand, the deprivation of liberty to which they are often subjected.

Their condition of high vulnerability justifies indiscriminate protection of the legal rights and freedoms of mentally ill persons and the carrying out of effective steps to remove the stigma and marginalization in order to ensure their acceptance and integration into community.

The law 487/2002 on mental health and protection of persons with mental disorders represented the first step towards promoting the rights of patients with mental disorders. However, the law and its application are deficient in some aspects, which can prevent protection of autonomy and well-being of its beneficiaries. This situation could be solved, on one hand, by correcting the shortcomings of the law, and, on the other hand, through appropriate training of personnel in the field of psychiatry on medical ethics and human rights.

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