

# **Pravni vidiki neprostoVOLjnega pridržanja (starejših) oseb v psihiatrični bolnišnici**

## **Legal aspects of involuntary detention of (older) people in a psychiatric hospital**

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### **Izvleček**

Namen tega članka je predstaviti bistvene pravne zahteve, ki morajo biti izpolnjene za zakonito pridržanje osebe na zaprtem oddelku psihiatrične bolnišnice in ki so bile poudarjene v odločbi Ustavnega sodišča št. U-I-60/03. NeprostoVOLjno pridržanje na zaprtem oddelku psihiatrične bolnišnice pomeni hud poseg v človekove pravice in temeljne svoboščine bolnika, zlasti v pravico do osebne svobode (prvi odstavek 19. člena Ustave) in pravico do varstva duševne integritete (35. člen Ustave), pa tudi v pravico do prostovoljnega zdravljenja (tretji odstavek 51. člena, ki zagotavlja tako pravico do zdravljenja kot tudi pravico do odklonitve zdravljenja). Naloga zakonske ureditve je, da neprostoVOLjno pridržanje duševnih bolnikov na zaprtih oddelkih psihiatričnih bolnišnic uredi tako, da bo zagotovljena učinkovita uresničitev legitimnega namena, ki upravičuje tovrsten ukrep (tj. odvrnitev nevarnosti, ki jo bolnik zaradi duševne bolezni povzroča bodisi drugim bodisi sebi, in odprava razlogov, ki to nevarnost povzročajo), hkrati pa naj bo zagotovljeno tudi spoštovanje človekovih pravic in temeljnih svoboščin bolnikov v skladu z mednarodnimi standardi varstva človekovih pravic ter upoštevajoč ustrezne rešitve v primerljivih sodobnih evropskih zakonodajah. Prisilno pridržanje na zaprtem oddelku psihiatrične bolnišnice je ukrep, ki naj bo uporabljen samo v primerih, ko nevarnosti ni mogoče odpraviti z drugimi ukrepi izven (zaprtega oddelka) psihiatrične bolnišnice. Ena izmed temeljnih pravic, ki mora biti zagotovljena vsakemu prisilno pridržanemu duševnemu bolniku, je pravica do sodnega varstva glede zakonitosti pridržanja. Bolniku, ki sam ni sposoben razumeti in uveljavljati svojih pravic, je treba zagotoviti ustrezno zastopanje, s katerim bo v postopku poskrbljeno za učinkovito varstvo pravic in interesov bolnika. Ukrep prisilnega pridržanja bolnika v psihiatrični bolnišnici je logično povezan z zdravljenjem. Pridržanje bolnika v psihiatrični bolnišnici torej vključuje določene oblike zdravljenja, ki izhajajo iz samega namena in

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narave tega ukrepa. Seveda to ne more pomeniti neomejenega pooblastila za izvajanje kakršnihkoli ukrepov zdravljenja brez ustreznega zunanjega nadzora.

## Abstract

The aim of this article is to present the essential legal requirements that must be met in order for the detention of a person in the closed ward of a psychiatric hospital to be lawful; these requirements have been emphasized by the decision of the Constitutional Court No. U-I-60/03. Involuntary detention in closed wards of psychiatric hospitals represents a severe encroachment upon human rights and fundamental freedoms of a patient, particularly upon the right to personal liberty (Art.19.1 of the Constitution), the right to protection of mental integrity (Art. 35 of the Constitution) and the right to voluntary medical treatment (Art. 51.3 of the Constitution that guarantees not only the right to medical treatment but also the right to reject medical treatment). The purpose of a statutory regulation is to regulate involuntary detention of mental patients in closed wards of psychiatric hospitals in such a manner that the effective realization of a legitimate purpose that justifies such measure is guaranteed (i.e. averting danger that because of a mental illness a patient causes either to others or to himself/herself, and suppressing reasons that cause such danger), and simultaneously to guarantee the respect for human rights and fundamental freedoms of patients in accordance with international standards of protection of human rights and with regard to the adequate solutions in comparable modern European legislations. Involuntary detention in closed wards of psychiatric hospitals is a measure that should be used only in cases where danger cannot be suppressed by other measures outside (of closed wards) of psychiatric hospitals. One of the fundamental rights that must be guaranteed to every mental patient who is compulsorily detained is the right to judicial protection regarding the lawfulness of detention. A patient who is not capable of understanding and asserting his/her rights in the proceedings must be guaranteed adequate representation that will provide for the effective protection of rights and interests of a patient in those proceedings. The measure of compulsory detention of patients in psychiatric hospitals is logically related to medical treatment (therefore it is carried out in hospitals). Detention of patients in psychiatric hospitals thus includes certain forms of medical treatment that originate from the purpose and the nature of the measure. Naturally, this cannot mean unrestricted authorization for carrying out any measures of medical treatment without adequate external supervision.