

American University of Armenia

Master's Essay

**Legal Protections for the Mentally
Incapacitated in the case of Involuntary
Institutionalization**

By

**Maria Aghajanyan
MCLS**

Abstract

The transaction of involuntary institutionalization of a mentally incapacitated person raises human rights issues as institutionalization is carried out without the consent of the patient. Thus, it is important that the legislation that governs the transaction stipulates institutionalization only in exceptional cases and provides guarantees for legal representation of the patients. This paper provides an overview of the Armenian legal framework that governs the procedure as well as the international benchmarks for development of mental health legislation such as ECHR decisions, WHO recommendations and UN Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care. The paper reviews both failures of implementation of RA Law on Psychiatric Care and instances where the legislation itself falls short of international standards for mental health legislation.

Yerevan
2007

Introduction

The aim of institutionalization hearings is to assure that the rights of mentally incapacitated persons are upheld in the case of involuntary institutionalization. The presumed client is an individual suffering from a mental disorder that has been placed in an institution against his/her will and the transaction has been carried out with breaches of RA legislation that governs the procedure.¹ Contemporary international practice of treatment of mentally incapacitated persons favors the approach of provision of treatment in the least restrictive environment.² In many cases involuntary institutionalization may be regarded as an unnecessarily strict measure, which violates the rights of the patients to personal security and liberty. Thus, it is important that the legislation that governs the transaction stipulates institutionalization only in exceptional cases as well as provides guarantees to the mentally incapacitated persons for proper legal representation in case of a dispute over the need for institutionalization.³

Involuntary institutionalization is a controversial issue as it results in a clash of private and public interests. Thus, it is important to ensure that mentally incapacitated persons receive proper treatment and that there are sufficient mechanisms to assure that involuntary institutionalization occurs only in cases prescribed by law. It is also important to make sure that the patients have effective remedies in case of a breach of their rights. Only when all those issues are addressed can it be stated that a balance between private and public interests is found and all rights and freedoms are respected.

The complexity of the transaction is explained by the fact that there are several actors involved, each with their own private interests which often do not coincide. The interests can be categorized as follows:

¹ RA Law No. HO-80, "On Psychiatric Care," adopted 25 May 2004, as amended 02 May 2006, Chapter 6

² Mason and Laurie, 711-712

³ Mason and Laurie.

- i. Patient – the interest is to assure that his/her right to the least restrictive form of treatment is upheld and to exclude involuntary institutionalization unless absolutely necessary; also in case of involuntary institutionalization, to have effective mechanisms for ensuring all rights as prescribed by Law on Psychiatric Care and Civil Procedure Code are protected, i.e. right to impartial medical examination, right to the review of the case in court, right to representation, etc.
- ii. Relatives of the patient – the interest is to have the right to institutionalize the mentally incapacitated relative when he/she is a potential threat to himself/herself or to the society.
- iii. The institution – in case of a dispute regarding lawfulness of institutionalization the interest is to prove that there is no breach of law and insure that the patient was institutionalized according to the law.
- iv. Society – the interest is in having a healthy society, and protecting society from potential threats from mentally incapacitated persons.

The most effective mental health legislation should take into consideration all of the above mentioned interests and stipulate a procedure that will guarantee maximum protection of human rights of the patient. Mentally incapacitated persons are regarded as a vulnerable group with a high risk of violation of rights, thus ensuring adequate procedural safeguards for them is of immense importance. How and when the right to liberty and personal security of the mentally incapacitated person should be limited is subject to debate, nevertheless any mental health legislation should aim at securing basic standards for protection of fundamental human rights of the patients.

The most important policy implication of the transaction is preservation of the rights of a socially vulnerable group, ensuring that the right to liberty and personal security are restricted only in exceptional cases and in line with the RA legislation and international practice. Mentally incapacitated persons are at a high risk of abuse and ill-treatment and have

limited capacity to protect themselves from improper institutionalization. Therefore, such legislation is necessary that will preserve human dignity of the patients.

The transaction also implies a broader policy framework aimed at fostering a more tolerant society and public health improvement. Provision of adequate medical treatment to improve the condition of the patient will benefit the society at large and treatment of mentally incapacitated persons in the least restrictive environment will promote a social integration approach and thus foster a more tolerant society.

Armenian Legal Framework and Implications

The procedure of involuntary institutionalization in the Republic of Armenia is governed by the RA Law on Psychiatric Care and the RA Civil Procedure Code. The RA Law on Psychiatric care defines the rights of the patients subject to medical care and stipulates that involuntary institutionalization is allowed only in cases prescribed by law.⁴ The RA Civil Procedure code outlines the procedure for involuntary institutionalization of the patient.⁵ The Civil Procedure Code currently is the main legislation that provides procedural guarantees in case of involuntary institutionalization of the patient. It stipulates that only the institution has the right to initiate the process of involuntary institutionalization,⁶ the timeframe in which the application for involuntary institutionalization should be reviewed,⁷ and most importantly the requirement for judicial review of the need of involuntary institutionalization.⁸ Article 176 (1) of RA Civil Procedure Code provides the guarantee for judicial review of the institution's request to institutionalize the patient involuntarily and stipulates the patient's right to representation during the court hearing.⁹

Prior to the adoption of the RA Law on Psychiatric Care,¹⁰ the RA Civil Procedure Code¹¹ was the only document that regulated the procedure for involuntary

⁴ RA Law No. HO-80, "On Psychiatric Care," adopted 25 May 2004, as amended 02 May 2006, Art. 22(1)

⁵ RA Civil Procedure Code, Chapter 30

⁶ RA Civil Procedure Code, Art. 174

⁷ RA Civil Procedure Code, Art. 175

⁸ RA Civil Procedure Code, Art. 176

⁹ RA Civil Procedure Code, Art. 176 (2)

¹⁰ Adopted on 25.05.2004

institutionalization. There are no examples of implementation of the Civil Procedure Code to initiate involuntary institutionalization prior to September 1, 2005.¹² Since adoption of the RA Law on Psychiatric Care, the number of the cases lodged before RA courts have increased. Upon request, the RA Judicial Department provided information on implementation of the procedure of involuntary institutionalization as stipulated by RA Law on Psychiatric Care and Article 30 of RA Civil Procedure Code.

Case Study

Based on the provided information, twenty cases of involuntary institutionalization were reviewed by courts based in Syunik Marz, Lori Marz, and Erebuni and Nubarashen communities in Yerevan. In nineteen of the cases the courts approved the institution's request to involuntary institutionalize the patients. The representatives of institutions who wished to institutionalize the patients invoked "threat to society" as the reason for the institutionalization.¹³

In the case N2-610 reviewed at the Court of 1st Instance of Erebuni and Nubarashen Communities the right of the patient to be present during the court hearing and to be represented by a legal counsel was violated.¹⁴ Nubarashen clinic filed a request for involuntary institutionalization of Mr. Vitali Harutyunyan. Mr. Harutyunyan was placed in the clinic by Ararat Marz's police officers and community leader of Sayat Nova village, where he resided. Mr. Harutyunyan was previously convicted of the murder of his wife and sentenced to a prison term, which he served for 7 years. Mr. Harutyunyan's condition was examined by the medical staff of the institution and he was found to be unfriendly and negative towards the medical staff, police officers, relatives and especially his mother. During the court session Mr. Harutyunyan was not present as the representative of

¹¹ Adopted in 1998

¹² Mental Health Foundation, 21

¹³ Based on review of 20 cases requested from Judicial Department

¹⁴ RA Civil Procedure Code, Art. 176

Nubarashen clinic claimed that his mental condition makes it impossible for him to participate. The representative of the clinic mentioned that they have no information on the location and identity of the relatives of the patient. This statement is clearly contradictory to the summary of the medical review of the patient where it was mentioned that he is unfriendly to his relatives: his mother, sister and children.

According to the court proceedings in this case, the patient was not allowed to participate in the court hearing given his psychological condition. Nevertheless, the RA Civil Procedure Code stipulates that if the condition of the patient makes it impossible for him/her to participate during the court hearing, the hearing shall be held at the institution.¹⁵ In the given case, Mr. Harutyunyan's right to participate during the review of his case was violated. Moreover, not only was Mr. Harutyunyan denied his right to participate in the court hearings in person, but he also did not have a legal representative to defend his rights during the hearings. The RA Law on Psychiatric Care stipulates that the State guarantees the patient's right to legal representation, if needed from State's funds.¹⁶ This right of Mr. Harutyunyan to have legal representation was violated as well. On the other hand, the representative of the institution participated in the court hearing as required by the Civil Procedure Code.¹⁷ In this case, the patient was not represented during the court hearings at all and the court's decision was based only on the information provided by the medical institution. Given the patient's criminal history, it is particularly important that all rights of the patient are attained in order to avoid any bias during the court proceedings.

According to Chapter 30 of RA Civil Procedure Code the transaction should unfold as follows:

¹⁵ RA Civil Procedure Code, Art. 176 (1)

¹⁶ RA Law No. HO-80, "On Psychiatric Care," adopted 25 May 2004, as amended 02 May 2006, Art. 7(6)

¹⁷ RA Civil Procedure Code, Art. 176 (2)

1. Within 72 hours of placement into a medical institution the medical committee shall review the condition of the patient and decide whether involuntary institutionalization is necessary.¹⁸
2. Only the institution has the right to initiate the process of involuntary detention. The need for detention should be approved by the court. There should be a justification for the need of the patient's involuntary detention by the medical committee attached to the institution's application.¹⁹
3. The case must be heard by the judge within five days of filing the case with the court.²⁰
4. The patient has a right to be present at the hearing. In case the patient's condition does not allow for his presence, the judge shall hear the case in the institution.²¹
5. Both the patient and the representative of the medical institution who has initiated the process of institutionalization shall be present during the review of the case.²²
6. The Judge's decision provides the basis for institutionalization.²³

In the Republic of Armenia the transaction of involuntary institutionalization actually unfolds with a number of violations. During the judicial review of the case the patients are entitled to legal representation.²⁴ This requirement is generally met by the presence of the relative of the patient rather than a legal counsel.²⁵ Such an arrangement leaves doubt as to whether the interest of the patient is represented objectively and impartially as the interest of the relatives may be different from that of the patient. In this situation, there is a failure of

¹⁸ RA Law No. HO-80, "On Psychiatric Care," adopted 25 May 2004, as amended 02 May 2006, Art. 23

¹⁹ RA Civil Procedure Code, Art. 174

²⁰ RA Civil Procedure Code, Art. 176(1)

²¹ RA Civil Procedure Code, Art. 176(1)

²² RA Civil Procedure Code, Art. 176(2)

²³ RA Civil Procedure Code, Art. 177

²⁴ RA Law No. HO-80, "On Psychiatric Care," adopted 25 May 2004, as amended 02 May 2006, Art 7(6)

²⁵ Cases N.2-380, 2-301, 2-364, 2/2257, 2-1-530, 2-1-79, 2-1-1386, 2-1-1497, 2-1-1234, 2-1-682, 2-1-795, 2-1-1034

implementation of the RA Law on Psychiatric Care because Article 7 (6) of the Law guarantees to the patients the right to legal representation.

Another issue that may need further investigation is how well patients are informed of their rights in general. In a number of the court rulings reviewed it was mentioned that the patients objected to their involuntary institutionalization.²⁶ At the same time those patients did not challenge the decisions of the courts.²⁷ Combined with the violation of the patient's right to legal representation, this information leaves doubt as to the impartiality and objectivity of the court decisions to involuntarily institutionalize patients and indicates that patients are not informed of their appeal rights.

Despite the fact that the RA Law on Psychiatric Care and RA Civil Procedure Code stipulate the right of the patient to a fair and objective judicial review of the need of institutionalization, in practice this patient right is violated. The requirements for the patient's presence during the court hearing and the right to legal representation are essential to subsequently secure the fundamental right of the patient to treatment in the least restrictive environment. Given that the institutionalization is ordered involuntarily, it is essential that the procedure is implemented fully and in accordance with the provisions of the laws that govern the procedure.

International Best Practice

The Preamble to the RA Law on Psychiatric Care stipulates that "...the law regulates the procedure for creation of favorable conditions to secure human rights and fundamental freedoms as stipulated by international norms in the field of mental health, European Convention on Human Rights and RA Constitution".²⁸ Armenia is a Council of Europe member as of 2001 and as a member has ratified the European Convention on Human

²⁶ Cases N. 2-1-531, 2-1-1497, N 2-1-1234, 2-1-682, 2-1-1034, 2-364, 2-301, 2-380,

²⁷ The letter to the Judicial Department requested all cases regarding implementation of RA Law on Psychiatric Care and Chapter 30 of RA Civil Procedure Code. The Department provided only information on courts of 1st instance.

²⁸ Preamble. RA Law No. HO-80, "On Psychiatric Care," adopted 25 May 2004, as amended 02 May 2006

Rights.²⁹ Membership in the Council of Europe means that the decisions of European Court of Human Rights (ECHR) are binding on the state. Article 5 of ECHR is relevant for development of mental health legislation as it stipulates the right to liberty and security of individuals. Specifically, it provides that an individual may be deprived of his right to liberty through “lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants.”³⁰ The issue of the need of a review of the detention decision was discussed in *E v Norway* ECHR case.³¹

The landmark decision of the court with regard to interpretation of Article 5 of ECHR with regard to institutionalization of persons of unsound mind is the case of Winterwerp v. Netherlands. Here the court interpreted Article 5’s applicability to involuntary institutionalization and set the minimum standards for involuntary detention. The court found that in case of a need of involuntary institutionalization the following elements shall be met:

- v. The patient must be “reliably shown” by “objective medical expertise” to be of “unsound mind”,
- vi. The disorder must be of a nature to justify detention,
- vii. The disorder must persist throughout the period in which the patient is detained.³²

These standards for involuntary institutionalization are binding on Armenia as Armenia has ratified the Convention.

Furthermore, Armenia is a member of the United Nations as of March 2, 1992. Although UN Resolutions are not binding on the member states, they can be regarded as the approach of the international community towards a given issue. The UN Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care were

²⁹ Council of Europe Information Office in Armenia. *Signed and Ratified Documents*. August 2, 2007 <<http://www.coe.am/en/?go=signedratifieddocs>>

³⁰ European Convention on Human Rights, Art. 5(3)

³¹ Mason and Laurie, 712

³² Mason and Laurie, 712

adopted by the UN General Assembly resolution 46/119 on 17 December 1991.³³ The MI Principles give a broad framework for the rights and fundamental freedoms to which mentally incapacitated persons are entitled, stipulate the rights of the patients to an adequate standard of care and to procedural safeguards in case of involuntary institutionalization. The MI Principles also specify that involuntary institutionalization may be enforced only by the decision of a review body, which should be a judicial or impartial body³⁴ and which should periodically review the cases of involuntary institutionalization.³⁵ While not directly binding on a state, these standards can be required of Armenia because Armenian law directs that this transaction be carried out in conformity with international norms.³⁶

The World Health Organization (WHO) is another international body that can stipulate standards in this field as it is the coordinating authority for health within the United Nations system and the responsible body for providing leadership on global health matters and setting norms and standards.³⁷ WHO's *Mental Health Care Law: Ten Basic Principles* were developed as a compliment to the MI Principles and has an aim to assist countries in developing mental health laws. The ten basic principles may be summarized as follows:

1. Promotion of mental health and prevention of mental disorders
2. Access to basic mental health care
3. Mental health assessments in accordance with internationally accepted principles
4. Provision of least restrictive type of mental health care
5. Self-determination
6. Right to be assisted in the exercise of self-determination
7. Availability of review procedure

³³ Adopted without a vote on 75th meeting

³⁴ UN Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care, Article 17(1), Adopted by UN General Assembly resolution 46/119 of 17 December 1991

³⁵ UN Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care, Article 17(3)

³⁶ Preamble. RA Law No. HO-80, "On Psychiatric Care," adopted 25 May 2004, as amended 02 May 2006

³⁷ World Health Organization. *About WHO*. August 2, 2007 < <http://who.int/about/en/>>

8. Automatic periodic review mechanism

9. Qualified decision-maker

10. Respect of the rule of law³⁸

The basic principles stipulated by WHO also mention the availability of a review procedure and stipulate a stricter standard by suggesting an automatic review mechanism. *Guidelines for Promotion of Human Rights of Persons with Mental Disorders* is another tool that was developed by the World Health Organization, which provides a detailed description of application and interpretation of MI Principles. The *Resource Book on Mental Health, Human Rights and Legislation* developed by WHO provides an overview of the basic documents relevant for this field, the standards that should be used in developing mental health legislation, description of the rights and obligations. The WHO as an institution has developed substantive documentation on interpretation of MI Principles and thus facilitates better application of MI Principles throughout member countries and the world in general. Adherence to the guidelines can be required of Armenia as the RA Law on Psychiatric Care requires implementation of the transaction in accordance to international standards.

The Estonian Mental Health Act is a good example of a mental health legislation that is in conformity with the requirements of MI Principles on availability of a periodic review of the need of further institutionalization. Estonia was formerly a member of the Soviet block and is comparable to Armenia in size and population and has shown more willingness to reform mental health legislation and ensure better protection of patient's rights. The Estonian Mental Health Act gives a detailed procedure for review of involuntary treatment³⁹ and specifies concrete timeframes during which review of the patient's condition should take place.⁴⁰ Article 13(5) provides that in the case the court finds a need for institutionalization of the patient, the patient shall be institutionalized for an initial time of up to thirty days and

³⁸ World Health Organization. *WHO Resource Book on Mental Health, Human Rights and Legislation*. China, 2005, 15

³⁹ Estonian Mental Health Act, adopted 12 Feb. 1997, as amended 18 July 2002, Art. 13 (1-4)

⁴⁰ Estonian Mental Health Act, adopted 12 Feb. 1997, as amended 18 July 2002, Art. Art.13 (5)

subsequent institutionalization shall be authorized by the court. This minimizes the potential for abuse of the patient's right to liberty as well as limits the possibility of indefinite institutionalization.

In comparison, the main drawback of the RA Law on Psychiatric Care is that it does not provide for a periodic review of the need of involuntary institutionalization. Article 21(1) of RA Law on Psychiatric Care stipulates that in case of voluntary institutionalization, the patient may be released from the institution in the case when his/her condition is adequate for release, there is no need for further institutional treatment, and if the period for examination has come to an end. Article 21(2) further explains that the patient that receives treatment on voluntary basis shall be released based on the evaluation of the psychiatrist or by the patient's request, with an exception to cases when the patient's release poses a threat to society. For the cases of involuntary institutionalization the RA Law on Psychiatric Care does not stipulate any procedure for the release of the patient. The RA Civil Procedure Code also does not stipulate the procedure for release of the patient from the institution.

Out of the twenty cases in Armenia that were provided by the Judicial Department, the court ordered a timeframe for the involuntary institutionalization of the patient in only one case.⁴¹ In the case N. 2/2257 the court ordered involuntary institutionalization for thirty days, but did not specify how the need for extension of the involuntary institutionalization will be reviewed. In the rest of the cases the courts simply ordered involuntary institutionalization of the patients without specification of a timeframe for future review. Lack of a provision requiring periodic review of the need of further institutionalization makes the transaction ambiguous and is contrary to the notion that treatment shall be provided in the least restrictive environment and that the patient shall not be detained in an institution once the condition has improved and does not require further institutionalization. Therefore, the

⁴¹ Case N. 2/2257

RA Law on Psychiatric Care would be significantly improved with an inclusion of such a provision in the law.

REFORM

The transaction can be improved if amendments are made to the RA Law on Psychiatric Care as well as if implementation of the law is improved. One important aspect missing from the legislation is a requirement for periodic review of the patient's condition by a judicial body. Other essential provisions of the law are not being implemented, such as the provision which secures the patient's right to impartial and objective legal representation. These two issues constitute a major failure in terms of meeting the highest standard for provision of health care to mentally incapacitated persons in Armenia.

An amendment to the law is needed to stipulate a procedure for a periodic review of a patients' condition. In order to achieve such a change, a broad awareness raising campaign is needed targeting legislators. Although the legislators are responsible for adoption of the laws, quite often they lack information on the internationally accepted standards for regulation of the issue. Specialized NGOs often are more aware of the international best practices as well as of challenges in implementing the law in Armenia. Thus, they are in a good position to inform decision-makers of the risks of not having a provision to regulate the review procedure of the mentally incapacitated persons' involuntary institutionalization. The need for a law regulating mental health field in Armenia was initially lobbied by a coalition of 35 NGOs⁴² who may further advocate for the need to amend the law.

Armenia's international obligations and commitments of membership in United Nations,⁴³ World Health Organization⁴⁴ and Council of Europe⁴⁵ may be a useful a tool in lobbying for changes in legislations. The NGOs may argue that membership in these

⁴² Mental Health Foundation, 9

⁴³ United Nations. "What the UN does for justice, human rights and international law." *UN in Brief: July 27, 2007* < http://www.un.org/Overview/uninbrief/chapter3_humanrights.html >

⁴⁴ World Health Organization. *About WHO*. July 27, 2007 <http://who.int/about/en/>

⁴⁵ Council of Europe. *About Council of Europe*. July 27, 2007 http://www.coe.int/T/e/Com/about_coe/

organizations is worthless if the government does not aspire to implement the standards and recommendations that are stipulated by the organizations. Moreover, the NGOs may raise the issue that failure to comply with the international standards will result in violation of human rights and fundamental freedoms and the State will be in breach of its international commitments. In this case, the mentally incapacitated persons will have a remedy not only in domestic courts but before the ECHR as well. Ratification of European Convention on Human Rights implies that cases may be lodged before the ECHR against the government, given that all domestic remedies are exhausted.⁴⁶ With respect to the RA Law on Psychiatric Care, the NGOs may publicize the drawbacks of the law among the international community and organize discussions and conferences with participation of local and international experts to present experiences of various countries in drafting their mental health legislation. Such activities would draw the attention of international community to the issue and may pressure the government to undertake changes.

The NGOs may also seek funds for drafting recommendations on improvement of the RA Law on Psychiatric Care from donor organizations in Armenia such as the Open Society Institute and United Nations. Once the recommendations are developed, the coalition of NGOs may advocate for the need of improvement of the RA legislation regulating the field and pressure the government to adopt changes in the RA Law on Psychiatric Care.

Additionally, implementation of the process of involuntary institutionalization needs to be improved as the right of the patient to legal representation is violated despite the fact that it is guaranteed by the Law on Psychiatric Care. Given that most of the patients were represented in court by family members it can be assumed that the patients are not aware of their right to be represented by legal counsel. The RA Law on Psychiatric Care stipulates that the State guarantees legal representation to the patient from State funds.⁴⁷ Moreover, there are legal aid centers that may assist mentally incapacitated persons in presenting their

⁴⁶ Application form is available at the CoE Armenian site at <http://www.coe.am/en/>

⁴⁷ RA Law No. HO-80, "On Psychiatric Care," adopted 25 May 2004, as amended 02 May 2006, Art. 7(6)

cases in courts. The legal aid centers in Yerevan, Armavir, Hrazdan and Vanadzor have been established specifically with the purpose of assisting vulnerable groups in litigating their cases in courts and in assuring that vulnerable groups have adequate representation at court hearings.⁴⁸ The NGOs may work closely with the legal aid centers to facilitate communication between the patient and the legal advisers. The NGOs also may work with both the patients and their families to inform them on their rights and guarantees by the State.

The RA Law on Psychiatric Care has an objective to protect the rights of mentally incapacitated persons and to provide the highest attainable standard of care for them. In order to fully achieve this goal, the current Law should be amended with a provision for periodic review of the patient's condition. In terms of implementation, the NGOs shall work closely with the patients to raise their awareness on their rights as well as to suggest what solutions they have for proper legal representation in courts.

Bibliography

Mason, JK, and Laurie, GT. *Mason and McCall Smith's Law and Medical Health*. Oxford University Press, 2006.

Mental Health Foundation of Armenia. *Implementation of the Law on Psychiatric Care*. Yerevan, Antares, 2006.

⁴⁸ Amiryan, David. Personal interview. July 25, 2007

RA Law No. HO-80, “On Psychiatric Care,” adopted 25 May 2004, as amended 02 May 2006, Art. 23.

RA Civil Procedure Code, Chapter 30, 1998

Estonian Mental Health Act, adopted 12 Feb. 1997, as amended 18 July 2002

Amiryan, David. Personal interview. May – June 2007.

UN Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care, Adopted by UN General Assembly resolution 46/119 of 17 December 1991

World Health Organization, Division of Mental Health and Substance Abuse. *Guidelines for Promotion of Human Rights of Persons with Mental Disorders*. Geneva, 1996

World Health Organization. *WHO Resource Book on Mental Health, Human Rights and Legislation*. China, 2005.

World Health Organization. *Mental Health, Human Rights and Legislation*. 2007. 15 Jun. 07, 12:00 http://www.who.int/mental_health/policy/legislation/policy/en/

United Nations. “What the UN does for justice, human rights and international law.” *UN in Brief*. July 27, 2007 < http://www.un.org/Overview/uninbrief/chapter3_humanrights.html >

World Health Organization. *About WHO*. July 27, 2007 <http://who.int/about/en/>

Council of Europe. *About Council of Europe*. July 27, 2007 http://www.coe.int/T/e/Com/about_coe/

Council of Europe Information Office in Armenia. *Signed and Ratified Documents*. August 2, 2007 <<http://www.coe.am/en/?go=signedratifieddocs>>

Appendix I

It is suggested to amend Article 176 of RA Civil Procedure Code with the following provisions:

1. The court shall initially authorize involuntary institutionalization of any person only up to thirty days. The need for the extension of institutionalization should be reviewed and authorized by the court.
2. Request for extension of institutionalization after thirty days must be substantiated by the decision of the medical committee. In the cases where the patient is not a threat to himself or the society it must be clear that further institutionalization will result in improving the condition of the patient.
3. The institution must present a detailed care plan for the patient along with the decision of the medical committee on the need of institutionalization.

Appendix II

European Convention on Human Rights

Article 3 - No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Article 5(e) - Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts, or vagrants;

RA Constitution

Chapter 2 of the Constitution defines the rights and liberties of RA citizens. Specifically Article 16 defines that each individual has a right to liberty and security. No one shall be deprived of liberty except in the cases that are stipulated by law. The law stipulates deprivation of liberty in the following cases: to prevent the spread infectious diseases as well as threat to society from mentally disabled persons, alcoholics, drug addicts or homeless persons.

The UN Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care

MI Principle 17 - specifies that involuntary institutionalization may be ordered only by the decision of a review body, which should be a judicial or impartial body and which should periodically review the cases of involuntary institutionalization, as specified by domestic legislation.

UN Declaration on the Rights of Disabled Persons

Article 3 - Disabled persons have the inherent right to respect for their human dignity. Disabled persons, whatever the origin, nature and seriousness of their handicaps and disabilities, have the same fundamental rights as their fellow-citizens of the same age, which implies first and foremost the right to enjoy a decent life, as normal and full as possible.

Article 4 - disabled persons have the same civil and political rights as other human beings; paragraph 7 of the Declaration on the Rights of Mentally Retarded Persons applies to any possible limitation or suppression of those rights for mentally disabled persons.

Article 11 - Disabled persons shall be able to avail themselves of qualified legal aid when such aid proves indispensable for the protection of their persons and property. If judicial proceedings are instituted against them, the legal procedure applied shall take their physical and mental condition fully into account.

UN Declaration on the Rights of Mentally Retarded Persons

Article 7 - Whenever mentally retarded persons are unable, because of the severity of their handicap, to exercise all their rights in a meaningful way or it should become necessary to restrict or deny some or all of these rights, the procedure used for that restriction or denial of rights must contain proper legal safeguards against every form of abuse. This procedure must be based on an evaluation of the social capability of the mentally retarded person by qualified experts and must be subject to periodic review and to the right of appeal to higher authorities.

RA Law on Psychiatric Care

RA Law on Psychiatric Care defines the rights of the patients subject to medical care. Article 22(a) of Chapter 6 defines that involuntary hospitalization is allowed only in cases prescribed by law. The procedure is outlined in RA Civil Procedure Code

RA Civil Procedure Code

Chapter 30, Articles 174 – 177 of RA Civil Procedure Code's outline the procedure for involuntary institutionalization of a patient with specification of who can initiate the process of involuntary institutionalization, what is the timeframe for the procedure and what are the rights of the patient during that procedure.