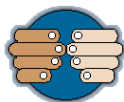




European Network of  
(ex)Users and Survivors  
of Psychiatry



World Network of Users  
and Survivors of Psychiatry



Center for the Human  
Rights of Users and Survivors  
of Psychiatry



Mental Health Europe

## LIBERTY? EQUALITY? JUSTICE?

### FRENCH MENTAL HEALTH LAW BREACHES HUMAN RIGHTS AND MUST BE REPEALED

The recently released documentary on the French Senate's website *Soignés d'office*<sup>1</sup> (*Forcibly Treated*) tells the stories of the experiences of individuals forcibly admitted to psychiatric hospitals or forced to agree to being treated against their will in the community. Each year in France, over 75,000 persons (figures for 2010 vary between 79 and 96,000) are forcibly interned in these hospitals, more than those sent to prison (70,000). About 80% are interned at the request of a "third party", usually a relative. Let us remember that psychiatry is the only medical discipline whereby a person can be treated against their will.

The documentary shows how the new mental health law introduced in August 2011, despite France having signed and ratified the United Nations Convention on the Rights of Persons with Disabilities (UN CRPD) in 2010, still denies psychiatric patients, who are covered by the Convention, the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, on an equal basis with others:

- French psychiatric patients are still forcibly admitted on the basis of a psychiatric diagnosis which is contrary to Articles 3, 4, 5, 12, 14, 15, 17, 19 and 25 of the Convention;
- French psychiatric patients are still forcibly admitted on the basis of a psychiatric diagnosis and notions of dangerousness to self or others, and notions of necessity of "treatment", which is also contrary to Articles 3, 4, 5, 12, 14, 15, 17, 19 and 25 of the Convention.

France is in breach of its obligations towards persons with disabilities under binding international law. The Convention requires all States Parties to enact legislation to implement the rights which have been recognised, and to repeal laws constituting discrimination against persons with disabilities.

The UN CRPD Committee has made clear that any deprivation of liberty on the basis of mental, intellectual or psychosocial disability, contravenes Articles 14 and 17 in particular, and that legal provisions authorising internment linked to an apparent or diagnosed disability must be repealed.<sup>2</sup> This includes provisions linking "an apparent or diagnosed mental illness" with criteria such as danger to self or others, or the need for care and treatment.<sup>3</sup> Effectively, the UN CRPD clearly stipulates that deprivation of liberty in psychiatric institutions/hospitals or in the community, for any length of time, as well as involuntary psychiatric treatments, are unlawful.

The judicial process introduced with the July 5<sup>th</sup> 2011 new mental health legislation, which was meant to provide a legal safeguard, has in fact worsened the situation by not complying with the terms of the UN Convention. There is also a general consensus that it has produced a dramatic increase in the number of involuntary admissions. In addition under international human rights obligations, the only role the judicial system should have, is to ensure that

<sup>1</sup> 31/03/12: <http://www.publicsenat.fr/vod/documentaire/soignes-d-office/72281>

<sup>2</sup> Concluding Observations on the report of Spain, CRPD/C/ESP/CO/1, paragraph 36; Concluding Observations on the report of Tunisia, CRPD/C/TUN/CO/1, paragraphs 28-29.

<sup>3</sup> OHCHR Thematic Study on raising awareness and enhancing understanding of the Convention, A/HRC/10/48 paragraphs 48-49.

no one is deprived of their liberty unlawfully, that a person is not treated in hospital or in the community against their will. Instead, by letting the Juge des Libertés ” (special judges who are involved from the 15<sup>th</sup> day of internment) rely upon the judgment of psychiatric experts in order to decide upon the legality of the deprivation of liberty of an individual, rather than respect the terms of the UN Convention. This French law has given society the powers to incarcerate people based on psychiatric stereotypes and myths by mainly focusing on the person’s behaviour and perceptions of dangerousness to self or others. This totally flouts the basis of the UN Convention that absolutely requires that persons with “mental ill-health” should be treated as members of society on an equal basis with others, that is to say not meted out adverse treatment on the basis of their disability or psychiatric diagnosis (Articles 1, 3, 5, 14, 25 among others).

Deprivation of liberty based on the idea that the person does not understand what is happening to them is unacceptable under the Convention. Using a person’s apparent lack of insight as an excuse to give the decision-making power to other people is a deprivation of legal capacity, which contravenes the recognition of legal capacity on an equal basis with others required by Article 12. However, as the documentary and its subsequent debate show, the concept of lack of insight is still the primary justification offered for locking someone up and/or to force them to receive treatment. Under Article 12, everything must be done to offer a person support to make their own decision about whether to accept or refuse treatment, and such support must itself respect the person’s autonomy, will and preferences. Nor should a substitute decision-maker be put in place, either as a matter of law or practice/custom. Moreover, the person’s choice, once expressed, must be respected and followed. In France those patients presented in front of the Juge des Libertés (who wear their gown at all times, even during hospital visits) are “prepared” for the audition by a psychiatrist or a psychiatric nurse. This is not the appropriate support proposed by the Convention. As psychiatric survivor Peter Campbell says, psychiatry is that “ostensibly helping system which places major obstacles across our path to self-determination”.

In France, a vast (dis-)proportion of involuntary admissions is the result of requests from a third party, usually relatives, who are put in intolerable situations due to lack of real support, first to the patient often in a crisis, and then to them. In the film, a young woman who has been under such a legal order for years, clearly describes the abusive nature of involuntary admissions at the request of a family member. Her life is suspended to the will or, in her own words, a “Damocles sword”, of a psychiatrist if she does not behave or comply strictly to the terms of the contract she is forced to sign if she wants to be allowed out on permitted leave. If she fails, this leads to the immediate involvement of the police and of the psychiatric team, forcibly taking her back to hospital. She says, “you’re never really free”. She also points to the fact that upon admission the person is unable to challenge anything as, “straight away a chemical straightjacket is used” which prevents people from talking for a couple of days. Only then are they allowed to speak, once “they are properly drugged up”. There is no one to represent their rights during those crucial early hours and days. A patient has to wait a couple of weeks before the judiciary process kicks in.

The role of families in the forced internment or treatment of relatives is a shameful tool used by psychiatry that highlights its impotence in supporting people properly. Families are often manipulated or collude in the process. They should instead be offered proper support and be totally removed from any legal process - which legitimacy cannot be upheld anyway since it does not comply with the terms of the UN CRPD.

The new legislation also has the potential to lend itself to abuses within the wider community as illustrated by a recent event. In March 2012, an environmental activist demonstrated peacefully in his village in Southern France<sup>4</sup>. The local authorities had him forcibly admitted to a psychiatric hospital where he stayed for ten days. Their reason? He had committed a public (dis-)order offense and was a danger to himself. These are the types of crude excuses that pass for psychiatric diagnosis on the basis of which persons can be forcibly and “legally” interned in France. Effectively this could happen to anyone who does not behave or conform to certain codes.

Human rights violations in French psychiatry long pre-date the new mental health law but none of the professional networks (as well as their trade unions etc.) that have now come out fighting against it, and who lay claim to a

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<sup>4</sup> <http://www.ldh-france.org/region/languedoc-roussillon/2012/03/29/hospitalisation-sous-contrainte-dun-militant-non-violent/>

humanistic psychiatry that does not violate freedoms, have actually spoken out against these violations in a public way. Since the beginning of their campaign, they have also consistently ignored (denied) the role that the UN CRPD could play in repealing this new legislation. The reason for this is that these very vocal and well organised voices are that of a psychiatry that looks at the new legislation first and foremost as an attack on the ethics of their professions and who considers the creation of an extra legal layer as an unwelcome intrusion into its affairs. Effectively, nothing would please more the French psychiatric world than to see patients simply consent to the medical judgement of psychiatrists, whatever is decided, “for their own good”.

The French Government and the French body of psychiatry have a cavalier attitude towards the human rights of persons with “mental ill-health”; they continue to allow if not encourage illegal deprivation of liberty, inhumane and degrading treatments on a daily basis. The reports of the UN Special Rapporteur for Torture Manfred Nowak have made clear that forced treatments can amount to forms of torture<sup>5</sup>.

For all these reasons, and as the new French President on the night of the elections promised that “no child of the Republic would be discriminated against or excluded”... and that he should be judged on the issues of “justice and equality”:

- We demand that the French Government change its legal as well as its mental health systems in order to comply with its international human rights obligations:
  - The United Nations Convention on the Rights of Persons with Disabilities does not appear to have played any role in the development of the legislation commonly known as “5 July 2011 mental health law”, as is required by the Convention. We therefore argue that the French Government should make a commitment to Parliament that they will repeal this law and enact whatever new legislation may be needed to give effect to their obligations under the Convention to incorporate into law the abolition of compulsory treatment and to ensure that mental health services are based on free and informed consent of the person concerned, as it undertook to do when it ratified the Convention in 2010.
  - By upholding the rule of law, that is to say the terms of the UN Convention and other human rights obligations, which are binding, France will show that it can respect the values it has signed up to.
- We strongly condemn the attitude of the French media for never exploring alternative approaches to human experiences to psychological distress that have been proven to work, only focusing on the medical model;
- We strongly condemn the attitude of French research bodies and academia for not publicising said advances and alternatives, thus colluding with the status quo.

What is happening is unfortunately not unique to France. It is happening in many countries in similar ways. There are no just mental health laws anywhere; a law that permits involuntary internment and involuntary treatment in psychiatry simply cannot comply with the United Nations Convention on the Rights of Persons with Disabilities nor with the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

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**UNGF:** The **Union Nationale GEM-France (UNGF)** is a national independent federation of self-help groups which aims to promote the principles of recovery and self-determination through activities and support for and by service users and survivors. [www.ungf.net](http://www.ungf.net)

**ENUSP :** The **European Network of (Ex-) Users and Survivors of Psychiatry (ENUSP)** is the grassroots, independent representative organisation of mental health service users and survivors of psychiatry at a European level and has members in 39 countries. Since its foundation in 1991, ENUSP has campaigned for the full human rights and dignity of mental health service users and survivors of psychiatry and the abolition of all laws and practices that discriminate

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<sup>5</sup> A/63/175 and A/HR/13/39/Add.1, paragraph 202, case on Norway

against us. ENUSP is currently a consultant to the European Commission, the Fundamental Rights Agency, and the World Health Organization-Europe. Through WNUSP, our members were active in the drafting and negotiation of the UN Convention on the Rights of Persons with Disabilities. [enusp.info@gmail.com](mailto:enusp.info@gmail.com) / [www.enusp.org](http://www.enusp.org)

**WNUSP:** The **World Network of Users and Survivors of Psychiatry (WNUSP)** is a democratic organisation of users and survivors of psychiatry that represents this constituency at the global level. In its Statutes, "users and survivors of psychiatry" are self-defined as people who have experienced madness and/or mental health problems, or who have used or survived mental health services. WNUSP had its beginnings in 1991 and became a full-fledged organization with a democratic global structure on adopting its statutes in 2001. Currently WNUSP has members in over 50 countries, spanning every region of the world. WNUSP also has Special Consultative Status with the Economic and Social Council of the United Nations (ECOSOC). Please see our website [www.wnusp.net](http://www.wnusp.net) for more information.

**CHRUSP:** The **Center for the Human Rights of Users and Survivors of Psychiatry (CHRUSP)** provides strategic leadership in human rights advocacy, implementation and monitoring relevant to people experiencing madness, mental health problems or trauma. In particular, CHRUSP works for full legal capacity for all, an end to forced drugging, forced electroshock and psychiatric incarceration, and for support that respects individual integrity and free will. [www.chrusp.org](http://www.chrusp.org).

**Mental Health Europe:** Mental Health Europe (MHE) is an organisation committed to the promotion of positive mental health, the prevention of mental distress, the improvement of care, advocacy for social inclusion and the protection of human rights for people with mental health problems, their families and carers. MHE vision is a Europe where mental health and well-being is given high priority in the political spectrum and on the European health and social agenda, where people with mental health problems live as full citizens with access to appropriate services and support when needed, and where meaningful participation is guaranteed at all levels of decision-making and administration. MHE's values are based on dignity and respect, equal opportunities, freedom of choice, anti-discrimination, social inclusion, democracy and participation. [www.mhe-sme.org](http://www.mhe-sme.org)