The courts' case-law on the imposition of emergency medical treatment in psychiatric facilities

Chapter XXIX of Act no. CLIV of 1997 on Healthcare, modified by Act no. CXXX of 2017 (hereinafter referred to as the Healthcare Act) contains the statutory guarantees for the protection of patients' rights in respect of persons with mental illness and the legal conditions for the restriction of their personal liberty. According to section 196 of the Healthcare Act, the medical treatment of psychiatric patients in psychiatric facilities may be carried out on the following three grounds: a) voluntary submission to medical treatment (section 197 of the Healthcare Act), b) emergency medical treatment (section 199 of the Healthcare Act) and c) compulsory medical treatment (section 200 of the Healthcare Act).

In case of the imposition of an (involuntary) emergency or a compulsory medical treatment, the decision on and the demonstration of whether the patient represents an indirect or direct danger to himself and to others are of particular importance (judgement of the European Court of Human Rights in the case of Plesó v Hungary, delivered on 2 October 2012). Section 188, points b) and c) of the Healthcare Act give a definition of the conducts that may pose an indirect or direct threat, and the patient's behaviour is ultimately assessed by a medical expert. If the person concerned represents a direct (imminent) danger, then he shall be subjected to emergency medical treatment in a psychiatric facility. The courts' case-law is consistent in holding that the patients' personal autonomy may be restricted only in proceedings conducted in compliance with the relevant legal guarantees and only upon proof of them posing an imminent threat (decisions no. EH 2012.5.P1 and BH 2011.226). On the other hand, if the patient represents "only" an indirect danger, the competent court shall pass a decision on his treatment within 15 days of the court being notified of his threatening conduct (sections 200 and 201 of the Healthcare Act).

From among the three types of medical treatments of psychiatric patients, it is the emergency medical treatment and its review, imposed and carried out by the judiciary, that are of the utmost relevance. Emergency treatment is imposed on patients who, due to their mental illness, represent a direct danger to their own life or physical integrity or to the life or physical integrity of others, and therefore shall be subjected to medical treatment against their will. The imposition of such treatment significantly restricts the patients' personal freedom and right to self-determination and immediately deprives them of their personal liberty, hence, it is of fundamental importance that involuntary treatment in psychiatric facilities be imposed and periodically reviewed by the courts.

At the initiative of the Commissioner for Fundamental Rights, the working group aims to examine the courts' nationwide case-law in respect of their entire procedure: the application instituting proceedings, the course of the proceedings, the manner in which their decision is reached and the content of their decision, as well as the implementation of the right to appeal.

1. The application instituting proceedings

It has to be examined whether there is a minimum set of requirements for the content of an application instituting court proceedings. The Healthcare Act contains no special provisions in that regard, however, the Code of Civil Procedure provides for the respect of the principle according to which the parties delimit the subject-matter of the proceedings. The working group has to assess what substantive requirements are set forth by the courts: documents that justify the patient's transportation to a psychiatric inpatient facility (the medical specialist's

referral, the paramedics' report on the patient's transport or a report on police measures), and the detailed explanation, in clear and easily understandable terms, of the medical practitioner on why the patient poses an imminent threat to himself or to others.

2. The fundamental tasks of the guardian *ad litem* [section 197, subsection (5) of the Healthcare Act]

The guardian *ad litem* shall contact the patient before his court appearance, seek information about the circumstances of his putting into care and inform him about his procedural rights. It has to be assessed whether the guardian has duly complied with his aforementioned duties, with particular regard to the fact that the patient is usually not aware of what has happened around him and of his rights. The role of the guardian *ad litem* – and of a lawyer appointed by one of the parties – in the proceedings should therefore be analysed.

3. The independent expert

The expert opinion of an independent expert plays a key role in the proceedings, because it is the expert opinion that may justify the medical well-foundedness of the patient's putting into care and further treatment. The expert opinion determines the patient's current mental health status on the basis of which the court decides on whether the patient's mental illness justifies the restriction of his right to self-determination. The working group will examine to what extent the courts have required the medical experts to give adequate reasons as to why the patient in the case at hand has represented an imminent threat.

4. The patients' personal hearing before a court of law is of outstanding importance. The working group will examine the minutes of such hearings, in particular in order to check whether the patients' mental health status, ability to communicate and eventually independent discourse (without answering questions) have been duly recorded in them.

5. The manner in which the court's decision is reached and its content

There are no procedural provisions on the manner in which the court's decision should be reached. Such decision may be delivered right after the end of the patient's hearing by including the decision's content and reasoning part into the minutes of the hearing, in that case, the parties may also state their appeal and make observations for the record. Alternatively, the judge or court secretary conducting the hearing may render his decision at a later date, in that case, he has to inform the parties that his decision will be delivered and served on them subsequently (Act no. CXXX of 2017 stipulates that such decision should be reached within a five-day deadline if the proceedings started on or after 1 January 2018). The working group will examine the courts' nationwide practice regarding how they have delivered their decisions and on whom (the patient or his guardian *ad litem* or both of them) they have served them.

The content of the on-the-merits decision should also be assessed: namely whether its operative part is unambiguous, whether it contains the case's factual background (the way in which the patient was put into care, the reasons of his putting into care, the patient's conduct that represents a direct danger) and an individualised reasoning that befits the case at hand.

6. The appeal procedure

Timeliness in the second instance proceedings is of prime importance in respect of the patient. The final court decision takes a position on the well-foundedness or ill-foundedness of the restriction of the patient's personal liberty, therefore it is of essential interest to have a final decision speedily and preferably before the thirty-day review of the medical treatment. The working group will assess the average time period that had elapsed between the delivery of the first instance decision and the referral of the case file to the court of second instance (after the service of the first instance decision on the parties and after the parties' observations).

The jurisprudence-analysis aims at examining compliance with the statutory guarantees as well as the practical implementation of the parties' procedural rights through the screening of the entire procedure of emergency medical treatment and, if necessary, at promoting the uniform application of the relevant legal guarantees and provisions by way of the elaboration of a standardised set of criteria.

Dr. Zsuzsanna Köves-Kósa
Head of the jurisprudence-analysing working group
Acting Head of Panel at the Civil Department of the Curia of Hungary