Further Thoughts on Forced Treatment

In its general comment No 1(2014) on Article 12 of the UN Convention on the Rights of Persons with Disabilities (UNCRPD), the UNCRPD Committee stated that “State parties must abolish policies and legislative provisions that allow or perpetrate forced treatment…” Forced treatment was left undefined but Special Rapporteur Juan Mendez made clear in his report of 1 February 2013 to the UN’s Human Rights Council that it included “forced medication and electroshock procedures”. It is to be hoped that it can be agreed that “forced medication” includes all situations in which individuals are administered medication against their will and not only situations where actual force is used. At present individuals are being coerced by psychiatrists into taking medication by being told that if they do not take it then they will be sectioned or, if they have already been sectioned, that they will be held down and injected with the drug if they refuse to take it orally. It is also to be hoped that it can be agreed that forced ECT gives more cause for concern than forced medication. One reason for this is that forced ECT appears to fall more obviously into the definition of inhuman or degrading treatment than does forced medication. Another reason is that the World Health Organisation (WHO) has stated that “If ECT is used, it should only be administered after obtaining informed consent”. However, the WHO has not recommended that psychiatric drugs should only be administered after obtaining informed consent. Clearly the WHO is more concerned about forced ECT than about forced medication.

In my paper entitled “Human Rights Implications of Forced Treatment” I made clear that I was not of the opinion that there should be an absolute ban on all forced treatment but that there might be exceptional circumstances where forced treatment should be permitted. The exceptional circumstances which I had in mind included those where young women with anorexia do not realise that death is a likely consequence if they do not change their eating habits. Coincidentally, since writing that paper I attended a meeting of the Cross Party Group Meeting on Human Rights. There I met a young woman who told me that she would not be alive today if she had not been force fed: she is of the opinion that the force feeding of anorexia patients should not be banned. It might be worth discussing whether it should be permitted and, if so, whether it should only be permitted with the agreement of a court at which the individual receives a fair hearing.

At the Cross Party Group Meeting to which I made reference above a man with an autistic son alleged that mental health professionals had told lies at mental health tribunals. That certainly happened at tribunals at which a Dumbarton woman appeared: the evidence is contained within the tribunal transcripts in my possession. In addition, within submissions supportive of petition PE01494 there were allegations that mental health professionals had given false evidence at other tribunals. The fact is that in Scotland it is not
necessary to torture mental health patients to get them to confess to having
made statements indicative of a serious mental illness: mental health
professionals can and have given mental health tribunals fabricated accounts
of interviews with patients. They can do this with impunity because they are
not required to give evidence on oath.

The Government’s position is that it does not comment on individual cases.
That is a defensible position. However, it would not be acceptable for the
Government to fail to take due note of repeated complaints that the 2003 Act
is not being implemented as expected. The Health and Sport Committee
should consider carefully whether the complaints about the implementation of
the 2003 Act imply that significant amendments to it are required. It is
particularly disappointing that the Government is not even prepared to amend
the Act so that witnesses are required to give evidence on oath at mental
health tribunals.

It is possible that the MSPs who passed the 2003 Mental Health Act assumed
that patients would not be detained under that Act unless they suffered from a
mental disorder that justified detention. It is also possible that MSPs assumed
that the compulsory treatment provided after detention would invariably
benefit those involuntary patients. The evidence submitted in support of
petition PE01494 makes clear that any MSP who made those assumptions
was mistaken. However, the 2003 Act is clearly based on the false premise
that each of those assumptions is true. Given this fact together with the
General Comment made by the UNCRPD Committee, it is now time to
challenge the apparent assumption that the detention in psychiatric institutions
of mental health patients followed by the routine provision of compulsory
treatment does not require the prior approval of a court as recommended by
the Council of Europe.

In its written evidence to the Health and Sport Committee about the current
Mental Health (Scotland) Bill, Inclusion Scotland suggested that “The Health
and Sport Committee may wish to ask the Scottish Government how it
intends to review existing mental health policy in light of the UNCRPD
General Comment”. It is to be hoped that the Health and Sport Committee
will do this and also that it will also vigorously challenge the Government if its
response appears to be unsatisfactory.

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