

June 10th, 2013

Dear Mr Mendez,

we are writing to you in reference to the latest report (submitted by you in your capacity as) of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (UN Doc. A/HRC/22/53, Submitted to the 22nd Session of the Human Rights Council 01/02/2013)

We would first of all like to express our appreciation and respect for the important work you perform. We support the assessments your report makes, save for two points, namely points 63. and 64., made on pages 14 and 15 of the report respectively, and to which we, the German Society for Bipolar Disorder e.V. (Deutsche Gesellschaft für Bipolare Störungen e.V. -DGBS), as spokespersons for individuals affected by such a condition, would like to respond in the following.

The passage of the report we refer to calls for an absolute ban of all kinds of coercive and non-consensual measures within clinical and psychiatric institutions. In this context we expressly welcome the German Constitutional Court's decision to require a stronger regulatory framework for the use of coercive measures in a psychiatric setting, do however, also want to raise the point that this area will always remain to be ethically problematic and that there exist situations in which no alternative to such measures is available or possible.

It is not rare that patients, subsequent to treatment under coercive or non-consensual measures, report that they experienced such measures as discriminatory, insulting and violative at the time of the intervention, yet retrospectively acknowledge that there may have not been any other possibility to return them to reality. In the end these people have even expressed their gratitude for such interventions into their personal rights.

To illustrate this, here an example from the DGBS's online based discussion forum concerning the use of coercive or non-consensual measures in psychiatric settings:

„I myself have experienced manic and psychotic conditions and in retrospect the physical fixation and non-voluntary medication were necessary, because at the time I simply did not acknowledge that I may be suffering from some kind of condition.“
(26th March, 2013)

Obviously we also want to see the use of coercive or non-voluntary measures in psychiatric settings be reduced to an absolute minimum. Such measures should under all circumstances and always only serve as the *ultima ratio*. This means that medical clinics and institutions must first attempt to gain the patient's uncoerced and informed consent based upon provision to him or her of both medical information and a trustworthy relationship. Nonetheless, there will always exist situations in which there is no alternative to non-consensual or coercive measures, such as those situations during which a patient who is in denial about the existence of his or her condition becomes aggressive or violent. Here it is especially important to consider that the very nature of a manic condition includes the incapacity to acknowledge the existence of such. Should the patient under such circumstances be left alone with his or her condition and therefore effectively to her own fate, it could under certain circumstances also mean to leave him or her to the potential

destruction of their social and financial livelihoods. The potential affect on third parties should also not be disregarded here.

In order to reassure and convince each and every individual patient, often at length, of the necessity of treatment, institutions would require a substantially higher number of professionals than they at present have at their disposal. Ambulatory Services and an increase in home treatment could avoid many of the cases of compulsory admitted patients (and therefore also the engagement of further coercive or non-consensual measures) – sadly there is a near to general lack of financial means for such actions. But even under ideal circumstances it will not always prove possible to reach a psychotic person.

In those cases in which psychiatric coercive or involuntary measures are however unavoidable there must exist strict guidelines and criteria for their application:

- Detailed written documentation of the procedure, including reasons, duration and aim of the measure, as well as the names of the persons participating
- Subsequent psychological reprocessing of the measures with the patient in order to avoid and minimize traumatization through such measures
- Establishment of transparency, for example through annual quality reporting by the individual clinics or institutions, which include details concerning the nature and frequency of coercive and non-voluntary measures

We hope that our above mentioned points can support you in your further thoughts and reasoning in respect of the topic at hand and wish you all the best in the further performance of your duty as Special Rapporteur.

Sincerely,

Martin Kolbe and Erwin Lenk

Board Representatives for Affected Persons, German Society for Bipolar Disorder e.V. (DGBS) and Members of the (DGBS) working group on Self-help for Affected Persons

P.S.: We are sending you this as an open letter which will be published on the website of the DGBS. We would also like to take the opportunity to draw your attention to the Statement made by the DGBS on occasion of the decision of the Federal Court of Justice concerning the same matter and which is annexed to this letter.