# Mental Health Law and Guarantees of Rights of Citizenship

Mental illness, in the same way as psychological abnormality, is, generally speaking, a misunderstood, discomforting and marginalized phenomenon, and is surrounded by myths and preconceived notions. It encompasses a number of deviations, states of dementia and abnormal personality, emotional changes, conscience-related or illness-derived disturbances as well as neuroses – i.e. intellectual or intellective disturbances, volitional disturbances, or mixed disturbances.

The patient who suffers from a mental ailment is entitled to welfare assistance and does not lose his rights of citizenship: he retains the right to humane treatment, the right to careful and impartial clinical-psychiatric diagnosis, the right to a judge and a lawyer, the right to constitute a family, and also rights of non-discrimination and access to the best mental health care available. All such rights must be the object of specific recognition.

A new welfare model – primarily associative, communitarian and personal – shall be deemed preferable to the traditional one based on public, institutional and hospital-related assistance. The custodian and coercive model should be eliminated, despite the fact that the Mental Health Law has opted for a judicial model as against a therapeutic model. Should some form of psychiatric disturbance occur, albeit serious, no denial of liberty or restrictions to it shall be immediately acceptable, especially regarding any person who does not present a real danger for himself or for others. No attempts towards «social hygiene or homogenization», «family excessive protection», «judicial paternalism» or «medical fundamentalism» shall be tolerated.

The notion of compulsory internship, in the Mental Health Law, finds its roots in a guarantee-oriented model, and culminates in a mixed model of decision subject to medical and judicial criteria. This implies that one should obtain «a consensus between doctors and judges, internship being made dependent upon the conjunction of two powers and two judges: on the one hand, upon a specialized medical decision, deep into technical knowledge and bound by a demanding professional deontology; on the other, upon a judicial decision founded on legal knowledge and guaranteeing that the Constitution and the law are made applicable in a correct way».

Compulsory internship is only possible, except for tutelary purposes and in the case of urgency, where it is the only way of guaranteeing that the patient shall be treated, and where, the following two conditions are present, cumulatively: a) the existence of a serious and disenabling psychological abnormality which remove the capacities of will and understanding; and b) a causal link between the predictable future behaviour and a danger that fundamental legal rights, of significant relevance, of both the person entitled to them and others, and of a personal or material nature, are put into jeopardy. Taking this into consideration, rights are recognized — upstream to the user of mental health services and during the process leading to internship , and downstream to the internee — and rules are established which are to be taken into account when rendering mental health services.

Compulsory internship, be it for reasons of risk or urgency, must always be disregarded when a consented external therapeutic appears liable or, *extrema ratio*, compulsory treatment or consented internship. It shall, on the other hand, be decided only with respect for the principles of legality, tipicity, necessity, excepcionality, adequacy, subsidiarity, proportionality and precariousness.