



*In Italy, psychiatric treatments are usually voluntary. Therefore, each of us has the right to choose "if" and "how" to be cured, to be adequately informed about nature and effects of therapies and to refuse any type of treatment imposed against our will. Law 833/1978 (which "incorporated" Law 180/1978) regulates an exception to this principle: the Involuntary Treatment. Therefore, in presence of this type of provision, we can be subjected against our will to psychiatric treatment.*

## **INVOLUNTARY TREATMENT: DO YOU KNOW YOUR RIGHTS?**

**Information leaflet on the rights of individuals subjected to Involuntary Treatment in hospital regime .**

### **Normative reference :**

- Law n° 833/1978 , Articles 33-34-35

### **Other sources consulted :**

- Italian Constitution Articles 32- 13- 24
- EU 679/2016 Privacy Policy (G.D.P.R.)
- European Charter of Patients' Rights
- Declaration on the promotion of patients' rights in Europe
- Committee for the Prevention of Torture and Inhuman or Degrading Treatments (CPT) Reports
- European Convention for the Protection of Human Rights

The fourth paragraph of Article 34 of Law 833/78 provides that Involuntary Treatment for mental illness can be carried out with forced hospitalization only if:

*“- there are psychic alterations such as to require urgent therapeutic interventions, - if the same are not accepted by the patient, and if there are no conditions and circumstances that allow the adoption of timely and appropriate non-hospital health measures.”*



## **INVOLUNTARY TREATMENT IN HOSPITAL REGIME: LEGAL PROCEDURE**

- A **doctor** (not necessarily a psychiatrist) **visits** you personally.
- Below, the **three conditions** that must exist simultaneously in order to be subjected to Involuntary Treatment:

- 1) A **doctor** detects a possible state of **mental alteration** that he considers so serious as to require **urgent** therapeutic interventions that cannot be postponed;
- 2) he **proposes** therapeutic interventions; you **refuse** these interventions;
- 3) there are **no conditions**, thanks to which, therapeutic interventions could be carried out, in a timely manner, in a **non-hospital context** (for example at the Mental Health Centre or at home).

The doctor insists and tries to convince you by establishing a dialogue and persuasion, informing you about the therapeutic interventions proposed, in order to obtain your **consent** and therefore your **voluntary hospitalization**;

- you continue to refuse both therapeutic interventions and hospitalization;
- the doctor draws up a **certificate** specifying: your personal details; his personal details and contacts; the reason for requesting Involuntary Treatment described in detail (**not only the psychiatric diagnosis**).

He must not use pre-printed forms; must describe all the initiatives undertaken to convince you of voluntary hospitalization; must cite the normative references and insert place, date, time, stamp and legible signature;

- the doctor sends the certificate to the **Mayor** of your municipality , or of the municipality where you are at that moment;
- the doctor calls and consults a **second doctor** (not necessarily a psychiatrist but obligatorily operating in the public service);

- the second doctor **visits** you personally and he also draws up a detailed certificate adding the indication of the hospital ward called Psychiatric Service of Diagnosis and Treatment in which you ought to be hospitalized.

If he agrees with his colleague, he **validates** the proposal of Involuntary Treatment to be sent to the Mayor;

- both certificates must be sent to the Mayor.

The Mayor, or his delegate, having acquired the two certificates, may issue an **order** within 48 hours from the validation (the Mayor may not validate the proposal even if it is not literally foreseen in the law): it is up to the Mayor to adopt such measures, in quality of local health authority and holder of the power to issue urgent orders.

The Mayor's order is an administrative act which implies the **notification** to the person concerned (unfortunately this is not explained in the legislation).

**Involuntary Treatment is an act of limitation of personal freedom which, issued in the form of an order, becomes effective precisely thanks to the notification to the person concerned.**

The law does not provide for any notification of the provision to the person subjected to Involuntary Treatment (neither by the Mayor nor by the Judge).

The need to make the person aware of the modality and terms in which he can oppose the provision that concerns him is an integral part of the right to a full **defense** and it is a **constitutional right**. The notification has the function of bringing the document to the attention of the recipient, in order to allow the adversarial procedure to be established and the effective exercise of the right of defense (art. 24 const. "**Right of defense**").

In each document notified to the addressee, the term and the authority to which it is possible to refer must be indicated. Often the documents are not delivered to the person concerned, who must expressly request them, with the difficulties that this entails.

*“It is necessary that the person concerned has the right to access to a Court and the opportunity to be heard personally or, if necessary, through a certain form of representation.*

*Otherwise he would not benefit from the fundamental procedural guarantees applied in the matter of deprivation of liberty”* (Source: ECtHR, Winterwerp v. Netherlands, October 24, 1979, n. 33).

The Mayor's order must include: your personal details; general information of both doctors; indication of the ward, place, date, time and legible signature;

- the order, if it is not carried out within 48 hours from its issue, **lapses** and this must be communicated to the Mayor. If it is still considered necessary, the request of Involuntary Treatment must be renewed (with the same legal procedure).

- If you were in a different municipality, the Mayor who issues the order will notify the Mayor of your municipality. He also sends notice to the Ministry of the Interior, to the Embassy and / or to the competent Consulate in case you are a stateless or foreign citizen.

- The Mayor transmits the order to the **municipal police** office which is the body that materially makes it enforceable and supervises its correct execution;

- the municipal police, together with health personnel, will accompany you to the **psychiatric ward** located inside public or conventioned hospitals.
- In **special cases**, the presence of the **police** may be required.

The provision with which the Mayor orders the Involuntary Treatment in hospital regime, together with the motivated medical proposal and the validation, must be notified, within 48 hours from your hospitalization, to the **Guardianship Judge** of the district of your municipality.

The Guardianship Judge, within 48 hours after receiving the order, having received some information and arranged for any investigations, provides with a motivated decree to **validate** or not validate the provision and notifies the Mayor. In case of failure to validate, the Mayor orders the termination of the Involuntary Treatment in hospital regime.

*The Guardianship Judge is a tribunal judge who is entrusted with questions concerning subjects that are incapable or not at all capable of providing their own interests. The Guardianship Judge, therefore, essentially deals with protecting vulnerable subjects, such as minors and incapacitated persons. His function is essential, as each of his provisions is adopted in the exclusive interest of the subject (minor, incapable, etc.) for which his intervention was requested.*



*Involuntary Treatment implies a **restriction of freedom**, as well as the deprivation of the constitutionally guaranteed right to choose whether or not to undergo a medical treatment.*

*In the current legislation it is not explicitly foreseen that the person concerned is personally heard by the Mayor and by the Guardianship Judge, never, at any stage of the procedure (as envisaged by the Committee for Torture Prevention Standards). There is therefore a constitutional right of defense problem that should be guaranteed to every person. The fact that it is possible to exercise it, does not reassure, because if there is no obligation to respect a certain form of guarantee, this will be difficultly adopted.*

*Below we indicate the **rights** of those who are often not given a voice, rights that are often just on paper, we know that practice seems to go in a completely different direction.*

*This does not discourage us, and should not discourage us, from reaffirming the existence and the enforceability of our rights.*



## YOUR RIGHTS:

Involuntary Treatment must always be carried out according to **article 32** of the **Constitution**, in respect of the person's **dignity** and of **civil** and **political rights**, among which, as far as possible, also the **free choice** of the doctor and the **place** of treatment (art.33 L.833 / 78), in fact:

- you have the right to freely choose your place of treatment (art.33 L.833 / 78) (we know that practice is different) . You can choose the ward in which to be hospitalized, if compatible with availability of beds and your distance from the structure.
- You have the right to freely choose your doctor (art.33 L.833 / 78) (it seems impossible but it is so), so if you prefer to be followed by a doctor rather than another, you can be visited by this doctor and keep to treatments he will prescribe you.
- You have the right to **communicate** with the outside (art.33 L.833 / 78), they cannot subtract your phone, pc or other devices (respecting other people's privacy and avoiding the use during the rest hours) and you can contact anyone: your family, friends, acquaintances, associations, a lawyer, the Guardianship Judge.
- You can receive **visits** from anyone you want to authorize to enter the ward, in accordance with visiting hours (this is not explicit in the legislation but it would be part of the right to communication).
- Although you cannot refuse treatment you have the right to **therapeutic choice** (this is not explicitly provided in the Involuntary Treatment Law): every individual has the right to freely choose between different procedures and



health care providers on the basis of adequate information (Source: European Charter of Patients' Rights).

- Ask to know the details of the Involuntary Treatment (even if it is not written in black and white in the current legislation), you have the "**Right to information**": every individual has the right to access to all the information concerning his state of health (Source: Declaration on patients' rights promotion in Europe). Be sure of your **status** (that is, if you are a voluntary or involuntary patient).

If you think there may be an abuse or a violation of your rights, ask to communicate with the competent **Guardianship Judge** (the one operating in the Municipality whose Mayor has ordered your Involuntary Treatment). It is important to be clear that they cannot refuse to put you in touch with the Guardianship Judge (it is not explicit in the legislation but is implicit in your right to communication with anyone).

*"It is difficult for the person subjected to Forced Treatment to find the way to contact the Judge during his hospital admission. It is true that according to Art. 33 "in the course of Involuntary Treatment, the sick person has the right to communicate with whom he considers appropriate", but if he does not have anyone with whom to communicate, and does not have anyone to support him in his intention to oppose Forced Treatment (family members, associations, friends, ...) it will be really difficult, in practice, to do it, taking into account the position of absolute subjection that he acquires as a compulsory patient "* (from: The Therapeutic Coercion. A comparative study by M. Pelazza).

Forced Treatment has a **duration** of **7 days**, with the possibility of **renewal** of 7 in 7 (in the current legislation there is no time limit !!). It is also possible that the conditions that require Forced Treatment cease to exist. The task of communicating these eventualities to the Mayor is always of the health responsible of the psychiatric service of the local health unit. The Mayor must notify the Guardianship Judge.

You have the right to contact your **trusted lawyer** (even if this is not explicit in the legislation, it is part of your right to communicate with anyone): Forced Treatment is a limitation of personal freedom. ("No form of detention, inspection or personal check or any other restriction of personal freedom is admitted, except by a motivated document of the judicial authority", art. 13 const. Par. 2).

- If you think that the procedure was irregular you can request the **revocation** or the modification of the provision directly to the **Mayor** (art. 33 L.833 / 78), **anyone can** do it. If someone wants to apply for revocation on your behalf, a proxy is required. Indicate the reasons for the request of revocation: the formal defects are easy to identify (for example the non-compliance with the formal steps, times, etc.).

It is more difficult to prove the non-existence of the conditions for Involuntary Treatment. Specifically, you should prove that the necessary conditions for hospitalization did not exist, i.e. that the intervention was not urgent or that you had not refused treatment or that an extra-hospital care setting was actually possible.

The revocation or amendment union provisions "are adopted by the same procedure as the revoked or modified provision" (art. 33 par. 8).

Remember: the Mayor has **10 days** to answer you (in practice he could answer when hospitalization is ended !!).

- You have the right to access your **medical record** (although it is not expressly provided for in the current legislation).

You have the right to access all **information** as well as all health documentation and records relating to your health condition. You have the right to read the medical record that concerns you and that contains anamnesis, diagnosis, prognosis, therapy and any other relevant data. At the time of your resignation, you have the right to request a copy of the medical record, sending a specific request to the hospitalization facilities. (Sources: European Charter of Patients' Rights; Declaration on the promotion of patients' rights in Europe: "**Right to information**": each individual has the right to access all the information concerning his state of health).

If in doubt, ask the **staff** of the department:

you have the right to be assisted by identifiable personnel, both in terms of **qualification** and with respect to the person and, therefore, with a visible and legible **identification tag** (Source: Declaration on the promotion of patients' rights in Europe).

- You have the right to be respected in your personal **privacy** and data (Sources: EU Privacy Statement 2016/679 G.D.P.R.; European Charter for Patients' Rights).

- From the normative point of view there is no specific law that attributes to the psychiatrist the power to physically restrain the patient (in fact, in the current legislation on Forced Treatment there is no mention of it).

Involuntary Treatment does not necessarily justify mechanical **restraint** (i.e. being tied to the bed), except in very exceptional cases falling within the so-called

**"State of necessity"** art. 54 p.c.

Article 54 of the Penal Code:

The "state of necessity" is the exoneration required by article 54 of the penal code according to which *"It is not punishable who committed the fact for having been forced by the need to save himself or others from the current danger of serious harm to the person, danger he did not voluntarily caused or that was otherwise avoidable, provided that the fact is proportionate to the danger"*.

The **requirements** for invoking the "state of necessity" are:

- the existence of a **current** and **inevitable danger**;
- the existence of a danger concerning **serious harm** to the person.

In simple words, those who practice restraint by demonstrating that they have acted within the framework of art. 54 p. c. are not punishable.

You can bring an **appeal** against the provision validated by the **Guardianship Judge** to the Court competent for territory (art. 35 L.833 / 78), **whoever** has an **interest** can do it.

The law does not provide for a deadline within which the appeal must be proposed and nothing is specified in the relevant article of the law. The ten-day deadline (article 739 p.c., third paragraph) is deemed to be applied.

You can perform and receive all the proceedings of the trial personally and in the trial before the Court you can have yourself represented by a person with a written mandate.

The appeal can be presented to the Court by registered letter with acknowledgment of receipt.

The President of the Court fixes the hearing for appearance of the parties and, having acquired the provision that ordered your Forced Treatment and having heard the public prosecutor, may suspend the same treatment even before the hearing for appearance is held.

On the request for suspension, the President of the Court provides within ten days.

- At the end of the 7 days Involuntary Treatment can be **renewed**:

If, according to doctors, Forced Treatment must last beyond the seventh day, the health care provider responsible for the psychiatric service is required to formulate a motivated proposal to the Mayor, who communicates it to the Guardianship Judge, indicating the further presumable duration of the treatment. The same legal procedure that was used for the initial request must be performed and, of course, the three legal conditions must exist. At the end of the seventh day, if there is no validation of the extension, the hospitalization cannot legitimately continue.

Once forced treatment is **ceased**, due to the expiration of the terms or due to the absence of one or more conditions for its subsistence, you can request the **resignation** from the ward (Sources: Charter of the patient's rights ; Health Services Card) and your request for "**release**" must to be heard. In fact, on

the basis of the aforementioned fundamental principle in the health sector, if there are not the conditions for the application of Involuntary Treatment there is the rule of voluntary interventions.

Therapeutic interventions, if present in the resignation document, can only be **recommended**.

In fact ,according to art. 32 of the Constitution par. 2: *“No one can be obliged to a specific medical treatment except by law. The law cannot in any case violate the limits imposed for the respect of the human being”*.





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