

Assignment Module 5

Juan's testimony outlines typical barriers towards the access to mental health care as they can be found in countries all around the world. In this essay, three particular situations in which Juan's right to access were infringed are put into context with related international legislation. Then three positive examples of how access to mental health care can be promoted are laid out. Finally three of the discussed issues are reviewed in the light of the mental health care system in Germany.

Barriers of access

Access to services: Even though Juan's testimony is lacking specific time data, it becomes evident that the treatment sets in very late, when the effects of his mental illness has already had a crucial negative impact of his personal, social and economical life.

According to international legal standards, Juan should have been enabled to access treatment in a less restrictive way and much earlier: In the General Comment 14 the right to health is specified by interpreting it as the right to "timely and appropriate health care" (sec.11) and by demanding the availability of appropriate services in a "sufficient quantity" (sec.12). In Article 25 (b) the CRPD underlines the duty of State Parties to "provide those health services needed by persons with disabilities specifically because of their disabilities, including early identification and intervention as appropriate (...).".

Juan's first contact with mental health care is initiated when he is admitted involuntarily to a psychiatric hospital. Long-stay and specialized psychiatric facilities however are meant to provide care for the small percentage of people with serious chronic conditions¹ and the need of long-term treatment. These institutions are not considered appropriate as a first access to mental health care as they display not only the most expensive but also the most restrictive type of mental health services.

Living conditions within the Mental Health facility: Juan is hinting at poor living conditions in the psychiatric clinic, remembering that the buildings were "bitterly cold" and lamenting the lack of food. He also reports the lack of privacy and respect for his personal belongings, which are stolen by other patients or withheld by hospital staff on multiple occasions.

Since the clinic is unable to provide adequate living conditions such as heated rooms, sufficient food and the protection of personal belongings, it lacks the essential aspects of access to health care as they are stressed out in General Comment 14: Elaborating on the notion of the highest attainable standard of health the Committee points out that "the right to health must be understood as a right to the enjoyment of a variety of facilities, goods, services and *conditions necessary for the realization of the highest attainable standard of health.*" (Sec. 9). It also highlights that State Parties have to provide health facilities that are *available, accessible, acceptable* and of *good quality* (sec. 12). Regarding availability, the "underlying determinants of health", including adequate living conditions, need to be met. To be acceptable, services also must be "culturally appropriate" (ibid). Article 25 of CRPD demands disabled persons to be provided with "care of the same quality (...) as to others" and urges health professionals to raise "awareness of the human rights, dignity, autonomy and needs of persons with disabilities (...)".

¹ S. WHO Organization of services pyramid (Funk et al.: Framework for Mental Health Policy)

Degrading or inhuman treatment: Juan's testimony on his time at the clinic also holds evidence for degrading and inhuman treatment of patients and the misuse of seclusion and restraint for punishment or the convenience of staff. The most crucial clue is his statement of eye-witnessing the physical abuse and beating of a fellow patient by hospital staff. He himself experiences physical violence by staff after an escape attempt².

The reported practices violate fundamental human rights³ and – taking place within a mental health care service – demonstrate barriers to the access to adequate mental health care. As in regard to the issue of poor living conditions, the General Comment 14 on ICESCR Article 12 can be used to argue that Juan's right to access was infringed by being unacceptable:

The prohibition of torture and inhuman treatment and the protection of human dignity present fundamental rights that according to the Committee are "integral components of the right to health" (GC 14, Sec. 3). Mental facilities that cannot provide protection of these rights lack acceptability (sec. 12). In this regard, the MI Principles⁴ provide further implications for the requirements of mental health care services:

"Every patient shall be protected from harm, including (...) abuse by other patients, staff or others (...)." Principle 8.2 Standards of Care

Promotion of Access

Juan's story not only illustrates typical barriers but also important strategies governments can apply to improve access to mental health care:

Access to outpatient services: The transfer from the psychiatric hospital to a psychiatric outpatient unit seems to be the turning point in Juan's life. His access to adequate care improves dramatically, since he no longer needs to be admitted into the clinic but is able to receive treatment and medication on a voluntary basis in a much less restrictive manner. Thus, although the outpatient clinic does not seem to be close to his home, the transfer is the first step towards community-based and more acceptable care as it is promoted by international law.

According to Article 19 (b) of the CRPD State Parties are obliged to provide community support services "to prevent isolation or segregation from the community".

Access to psychotropic medication: Juan has free access to medication for the treatment of his illness. Living on a low income, this is a very important advantage for him. The availability of psychotropic drugs is a crucial factor in regard to the access to mental health care and often plays a vital role in the course of an individual's illness.

Article 25 (a) is underlining the importance of "free and affordable health care" as well as GC 14 which states that "health facilities, goods and services must be affordable for all." (sec. 12).

² the fact that the involuntary admission seems to take place without any process safeguards demonstrates further human rights violations which can't be addressed in this essay due to the restricted focus on the right to health.

³ i.a. Freedom from torture or cruel, inhuman or degrading treatment or punishment CRPD Art.15

⁴ MI Principles are not legally binding but can be used as an interpretation advice.

Integration of mental health care to primary care: The most significant improvement for Juan is the integration of the mental health service into the primary health care centre of his community. In the past he had still been confronted with economical burden despite of the free medication due to the indirect costs of transport to the facility. Juan now receives both mental and physical health care at a minimum of costs while being able to live in the community.

The integrated system is a way to promote the equity of physical and mental health care and an answer to a number of provisions to be found in international legislation. It fulfills the CRPDs demand for care “as close as possible to people’s home” (Art. 25) and contributes to the Accessibility as it is demanded in GC 14 Sec. 12 by reducing discrimination and stigma and improving the physical, economical and informal access.

Situation in Germany

Due to the limited scope of the essay, only three of Juan’s essential experiences are put into context with the German health system.

The promotion of community care and the process of de-institutionalization in Germany were first triggered in the 1970s. Since then, an array of different services has been developed, including day clinics, psychiatric wards in General Hospitals, ambulant psychiatric and rehabilitation services and counseling offices. But the large number of different services also leads to a lack of transparency, especially since the legal framework and regulations regarding the funding and accreditation of services as well as other crucial aspects may vary between federal states.

Access to services: Despite the wide range of different services and comparably good financial resources, there is still evidence of a distinct under-supply of mental health care in Germany, which is mainly associated with two causes: There are huge regional differences with big accumulations of mental health care services close to Universities and other training centers for mental health professionals and urban regions in general. Additionally singles social groups and minorities are disadvantaged regarding the access to mental health care (particularly migrants, asylum-seekers).

The Integration of mental health care into the primary sector is a part of the overall mental health policy and has been further promoted by the provision of training opportunities and the development of adequate guidelines in the last years. The primary physician is legally permitted to prescribe and dispense psychotropic medication and to diagnose and treat (minor) disorders. However, with estimations claiming that only about 50% of all cases of mental illness are detected in primary health care, the question if primary physicians are qualified enough for this responsibility is discussed very controversially.

