An international human rights approach in working with mentally ill offenders in detention

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Question

Criminal justice:
Focus on the risk of the individual

Strength-based approach:
Focus on capabilities, qualities and assets of the offender. Demonstrate value of offender for the community and society.

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Human rights:
Limits the power of the state / interventions of the criminal justice system but...

Good framework for strength-based strategies?

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What do human rights say about strength-based approaches?

International legal instruments
International case-law
International monitoring bodies

Test 5 key elements of strength-based approach (Rapp et al., 2005; Rapp & Sullivan, 2014)

1. Goal oriented / client has capacity to grow
2. Assess and emphasize strengths of individual
3. Focus on context, natural resources and community
4. Client is in control of his treatment
5. Positive hope-inducing relationship between professional and client
General obligation

European Court of Human Right:
Obligation to provide ‘appropriate medical care’.

But what exactly is ‘appropriate medical care’ for mentally ill offenders in detention?
= strength-based approach?

General / broad obligation:
- To everyone
- Equivalence of care (same quality & specific care)
- Multi-disciplinary

Strength-based approach v human rights

1. Goal oriented / Client has capacity to grow

“The treatment of every patient shall be directed towards preserving and enhancing personal autonomy”

Un resolution 46/119. The protection of persons with mental illness and the improvement of mental health care, principle 9.3

The European Court of Human Rights accepted that
“the applicant was held in a prison psychiatric wing for such a long time, with no real hope of any change and without appropriate medical care”. Violation of the ECHR.


→ human rights: patient needs to have a perspective. No explicit goal-setting
2. Assess and emphasize strengths of individual

“The treatment and care of every patient shall be based on an individually prescribed plan, discussed with the patient, reviewed regularly, revised as necessary and provided by qualified professional staff”

“Psychiatric treatment should be based on an individualized approach, which implies the drawing up of a treatment plan for each patient”

“Create a personalized therapeutic environment where material conditions are concerned”

→ human rights focus of individualization

Strength-based approach v human rights

2. Assess and emphasize strengths of individual

“the practice observed in some psychiatric establishments of continuously dressing patients in pajamas/nightgowns is not conducive to strengthening personal identity and self-esteem; individualization of clothing should form part of the therapeutic process”

“Food must be adequate from the standpoints of quantity and quality, and be provided under satisfactory conditions. Food should be served at the correct temperature. Further, eating arrangements should be decent; in this regard it should be stressed that enabling patients to accomplish acts of daily life - such as eating with proper utensils whilst seated at a table - represents an integral part of programmes for the psycho-social rehabilitation of patients. Similarly, food presentation is a factor which should not be overlooked”

→ no human rights ground, but human dignity as a prerequisite for working with strengths (or any other program)
3. Focus on context, natural resources and community

“The CPT has been particularly struck by the small number of qualified psychiatric nurses among the nursing staff in psychiatric establishments, and by the shortage of personnel qualified to conduct social therapy activities (in particular, occupational therapists). The development of specialised psychiatric nursing training and a greater emphasis on social therapy would have a considerable impact upon the quality of care. In particular, they would lead to the emergence of a therapeutic milieu less centered on drug-based and physical treatments”

“The maintenance of contact with the outside world is essential, not only for the prevention of ill-treatment but also from a therapeutic standpoint. Patients should be able to send and receive correspondence, to have access to the telephone, and to receive visits from their family and friends.

“The CPT all too often finds that these fundamental components of effective psycho-social rehabilitative treatment are underdeveloped or even totally lacking, and that the treatment provided to patients consists essentially of pharmacotherapy. This situation can be the result of the absence of suitably qualified staff and appropriate facilities or of a lingering philosophy based on the custody of patients”

→ human rights focus on social aspect
Strength-based approach v human rights

4. Client is in control of his treatment

“Patients should, as a matter of principle, be placed in a position to give their free and informed consent to treatment. The admission of a person to a psychiatric establishment on an involuntary basis should not be construed as authorizing treatment without his consent. Any derogation should be based upon law and only relate to strictly defined exceptional circumstances”

But: some international sources:

“A proposed plan of treatment may be given to a patient without a patient’s informed consent if: (a) The patient is, at the relevant time, held as an involuntary patient (c) The independent authority is satisfied that the proposed plan of treatment is in the best interest of the patient’s health needs”

→ informed consent, but different from strength-based active involvement of patient

Strength-based approach v human rights

5. Positive hope-inducing relationship between professional and client

• Informed consent
• Professional secrecy
• Health care cannot be refused when a prisoner
  • violates the prison rules
  • commits illegal acts
  • behaves rude towards care personnel
• Medical personnel should never assist, participate or tolerate acts of torture or other inhuman or degrading treatment

→ no human rights ground, but a prerequisite for hope-inducing relationship.
Conclusion

• Human rights provide the prerequisites for qualitative mental health care

• But no preference for strength-based approaches (nor other)

• Main focus: qualifications, quantity and material detention conditions

• Human rights ensure human dignity and (material) detention conditions in which rehabilitation programs can take root and can be successful.

• Human rights support several aspects of strength based approach: making own choices and aim at raising personal autonomy and self-esteem of the patient