

The Legal Framework and Practices of Compulsory Admission and Treatment for Mental Patients: Comparative Study Between Taiwan and Germany

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Abstract

The Mental Health Act in Taiwan was amended and promulgated on December 14, 2022. The amendment adopts a prior judicial order mechanism for the compulsory admission and treatment of mental patients, aiming to better align relevant provisions with the principles of the Convention on the Rights of Persons with Disabilities (CRPD). Considering the aforementioned background, this paper, by comparing with German law, aims to examine the compulsory psychiatric admission compatibility with CRPD and on the premise of maintaining compulsory psychiatric admission, how mental health act can move towards achieving CRPD compliance, as well as how the courts should adjudicate such cases. This article first summarizes the current understanding and literature around Article 12 and Article 14 of the CRPD. Meanwhile, it explores the debate within Germany and Taiwan whether compulsory psychiatric admission violates CRPD articles. Secondly, the paper will address the positioning of public law placement within the German legal framework and present its legal framework and substantive criteria, particularly focusing on the conceptual understanding of "danger" within the context of public law placement and the eligible protected legal interests. Subsequently, the analysis will shift to Taiwan's approach to the compulsory admission and treatment of mental patients, discussing its functions and characterization, legal framework and substantive criteria. By drawing

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comparisons with German legal systems and practices, the paper will evaluate the new provisions of Taiwan's Mental Health Act and highlight aspects that courts should consider when making rulings under the new law. Given the adoption of the "experts lay judge system" in the new law, where a collegial panel comprising medical experts, representatives of patient rights groups, and professional judges conduct hearings, the paper will also analyze how the experts lay judge system can effectively implement the prior judicial order mechanism to better safeguard patient rights. Finally, the paper will consolidate the research findings and present conclusions and prospects.

Keywords: Mental Health Act, compulsory admission, compulsory treatment, Convention on the Rights of Persons with Disabilities, personal freedom, right to autonomy, prior judicial order, principle of proportionality