



Second Study Commission  
Civil law and procedure

Meeting in Vienna (Austria), 11 - 13 November 1981

Conclusions

PROTECTION OF THE INTERESTS OF MENTALLY HANDICAPPED IN PRIVATE LAW

The commission has unanimously adopted the following recommendations:

1. The compulsory commitment of a mentally ill person should only be effected in his own interest or in case of serious danger for others.
2. In order to avoid all risks of arbitrary confinement, the commitment should only be decided by an unbiassed authority, preferably judicial, on the basis of the opinion of two doctors, of whom one should be an expert.
3. A control by the same authority is essential, if possible before the admission, or at least with a very short delay, with a personal hearing of the mentally ill person, for whom an appeal to a judicial authority should be open.
4. Capacity should be the rule and incapacity the exception.
5. In the case of damage caused by the mentally ill person, the judge ought to give the victim a fair reparation, taking into account all the circumstances of the case.

The commission has had its attention drawn to two recent developments in the field of protection for mentally handicapped persons:

- a) the “sauvegarde de justice”, a system of protection limited in time, introduced in the law of France to protect certain partially handicapped people likely to damage themselves by legal acts which they do;
- b) the "prolonged minority" - system, introduced in Belgian law for persons seriously mentally retarded. The commission also wishes to draw attention to the special problems which affect those who have become dependent on drugs and to the necessity of establishing a set of rules in their protection.