Recommendation the Council for the Administration of Criminal Justice and Protection of Juveniles

Summary for publication

title	:	*Policy changes relating to leaves of absence for patients detained on hospital orders, February 2007*
submitted to	:	*the Minister of Justice*
date	:	*23 February 2007*

1. The introduction of secure escorted leave

Secure escorted leave is being introduced in the Netherlands as a new initial phase of supervised leave for hospital order (TBS) patients. In its application for leave, the forensic psychiatric hospital must specify clearly in what ways the patient will be supervised during his leave. A specially trained security officer will accompany the escort (usually a social therapist) in all such cases of secure escorted leave. Non-secured escorted leave is to be granted only after secure escorted leave is no longer deemed necessary. Secure escorted leave must also be possible at later stages of a patient's treatment, if circumstances so require.

In the context of present-day practice regarding leaves of absence, the Council sees no cause for a renewed tightening of security measures as the risk of a patient absconding is already very low. This is shown in the report by the Expertise Centre for Forensic Psychiatry (EFP) on instances of absconding and non-compliance by hospital order patients[1], which report has been discussed in detail during the Visser Commission's parliamentary investigation of the Dutch hospital order system[2]. Nor does the Council expect that the proposed changes in policy relating to leave for patients on hospital orders will bring about the desired rise in public safety. As the EFP report shows, the risk of a patient absconding during the initial escorted phase of the leave of absence pathway is not great enough to justify additional measures. Most absconding incidents occur during unescorted leave, which is granted in a later phase of the patient's treatment programme. More could therefore be gained by introducing improvements to the unsupervised phase, some of which might be based on a detailed consideration and implementation of the EFP's recommendations. From the report it is evident that certain categories of hospital order patients are more likely to abscond than others, and that the advance screening procedure prior to leave could be improved on a number of points.

The Council also feels that escorted leave should not be an option until sufficient progress has been achieved in a patient's treatment and the risk of re-offending is deemed to be acceptably low. As long as secure escorted leave remains necessary, such conditions would not be fulfilled. An additional consideration is that it would not be feasible to sustain the staffing levels necessary to implement secure escorted leave on a structural basis. A final problem is that there is almost no support at all in the executive managements of the forensic psychiatric hospitals for the introduction of secure escorted leave. Extra security during escorted leave should therefore only be applied on an ad hoc basis, as in the case of leave of absence granted on humanitarian grounds for example.

If secure escorted leave nonetheless becomes standard practice in the initial phase of leave pathways, then the Council recommends that the duration of this phase be limited. The number of times that secure escorted leave is granted (i.e. the duration of a patient's secure escorted leave phase) should be set for all hospital order patients, and extensions of this phase should only be considered in special circumstances.

2. Changes to the rules governing the use of force against hospital order patients

The regulations are to include a provision that leave escorts will use force if necessary and feasible to

---

[1] Hildebrand, M., Investigation of absconding and incidents involving hospital order patients 2000-2005. Utrecht EFP, 2006. The Expertise Centre for Forensic Psychiatry (EPF) concludes that there is a 0.002% chance of a detainee absconding during the period of the investigation. Most abscondings took place while the offender was on unescorted leave.

[2] Parliamentary enquiry into hospital orders; *Tbs, vandaag over gisteren en morgen* (Hospital orders: today, looking at yesterday and tomorrow), Parliamentary proceedings, Lower House, 2005-2006, no. 30250; see in particular section 4.4, pp. 100-107.

prevent the patient absconding, unless that would endanger either the escorts or bystanders. Except under those same circumstances, escorts are also expected to establish the route by which the patient absconded and the current location of the missing patient.

The currently existing regulations grant escorts only a discretionary power to use force whereas the new regulations more or less assume the use of force in cases of absconding. The Council views this as an excessive burden on the escorts and as a source of unnecessary risks. Unlike situations within secure institutions, for which the present regulations were created, escorts are often alone with patients during escorted leave. It is unreasonable to expect an escort to make a well-considered decision in an instant about the use of force.

Significant risks are inherent in the new rules governing the use of force during leave. Hospital order patients who intend to abscond are likely to warn their escorts against using force, and will be inclined to threaten or use violence themselves. The measure might thus be seen to elicit violent behaviour on the part of the patients. Once a patient has absconded in a violent manner, fear of punishment will deter him from reporting in or giving himself up quickly, whereas research has shown that most absconding episodes last no more than three days and that most absconders do ultimately give themselves up.

The Council therefore advocates refraining from the use of force in such situations. Rapid and effective intervention in the event of an absconding can be achieved by improving contacts with local police. The new regulations represent a step in that direction.

3. Creation of an Advisory Board for the review of leaves of absence
This body is intended to ensure the organisational separation of leave application assessment from decisions about the cost of care, so that decisions about leave will not be influenced by interests relating to the purchase of treatment services. Moreover, professional safeguards are to be incorporated in every decision about leave, while preserving ultimate ministerial responsibility. The Board is to review each application for leave and make recommendations to the Minister of Justice. If the Board rejects an application, no leave will be granted. If the Board recommends that leave should be granted, the Minister may still decide otherwise. The Board is to consist of nine forensic psychiatrists and psychologists. These experts will be organised into three assessment committees; each committee will have an external chair, preferably a legal expert, and a risk assessment expert will also be appointed to each committee.

The Council considers the establishment of this independent leave assessment board to be a significant improvement. It would at least ensure the essential organisational separation between the assessment of leave applications and the purchase of treatment services. It would also address criticisms made against the present procedure, that it hovers between a procedural and a more substantive assessment. At the moment, the hospitals feel that a substantive assessment falls within their own remit, and the Justice department feels that leave applications should at least satisfy the formal requirements. In the Council's view, the independence of a leave assessment board would be further enhanced by removing the Minister's prerogative to deny leave against the advice or decision of the Board. In this context the Council endorses the need to limit ministerial responsibility in leave of absence practices, as was also advocated by the Visser Commission[3]. It should be clear that the Minister sets out the main lines of policy and cannot be held responsible for its implementation, which falls within the remit of the hospitals. If it is nevertheless decided to retain the ministerial prerogative to deny leave applications against a positive recommendation from the Advisory Board, it would be prudent to introduce a right of appeal to the Council for the Administration of Criminal Justice and Youth Protection (RSJ), in the interest of safeguarding the patients' rights.

As a comprehensive set of regulations has not yet been adopted, many questions still remain unanswered. Among them are the relationship and the division of responsibilities between the advisory committees, the forensic psychiatric hospitals and the Individual Hospital Orders Affairs Department at the National Agency of Correctional Institutions (DJI/ITZ). In that light, the Council recommends that the individual responsibilities and powers of those three bodies be circumscribed as clearly as possible. It also recommends giving forensic psychiatric hospitals the right to further clarify a leave application to

---

[3] *Ibid*., chapter 1.6, '*Inquisitiedemocratie*' (Inquisition democracy)

the committees, if necessary, and giving the committees the right to demand any and all information they deem necessary for their deliberations.

Finally, the Council recommends that the Advisory Board publish an annual report explaining its procedures and justifying the fulfilment of its tasks.