

Recommendation from the Council for the Administration of Criminal Justice and Protection of Juveniles- Summary -

TBS leave regulations, a response to the draft regulations

Placement under a hospital order (in Dutch 'Terbeschikkingstelling' or tbs) is a court-imposed treatment measure for persons who have committed a serious offence while suffering from a psychiatric illness or disorder. The aims of tbs are treatment of the disorder and protection of society. Tbs may or may not be imposed in combination with a prison sentence, depending on the person's degree of accountability.

Recommendation to the Dutch Minister of Justice, dated 16 August 2010

The Council was asked to provide advice on the draft TBS leave regulations. The draft regulations presented to the Council mainly concern a technical conversion of existing policy rules into a Ministerial Regulation.

The Council considers laying down the leave regulations in a Ministerial Regulation to be a good development. The leave regulations will become more effective as a result, inter alia where the legal position of those under a hospital order. In future, the formation or amendment of further leave regulations will be provided with more procedural guarantees. Because a Ministerial Regulation, contrary to policy rules, offers less room for deviation, the Council presses for declaring the hardship clause also applicable to the cases referred to in Article 13, which regulates the cancellation of leave by operation of law. The Council further recommends mentioning the term for handling leave applications by the TBS Leave Assessment Advisory Committee not only in the explanation, but also including it in the leave regulations themselves. In the event of administrative negligence, the original leave authorisation should continue to apply until a decision on a new authorisation has been made. If it is decided not to do so, the 'remedy term' should at least be included in the leave regulations themselves.

The Council acknowledges that the safety of society sets limits on the leave possibilities of those under a hospital order. The Council does observe however that weighing other interests related to treatment, which are also intended to serve the safety of society, are severely restricted as a result. This has consequences for the progress of treatment and may also result in the average term of treatment in TBS continuing to increase. It is therefore recommended that the assessment criteria for granting leave within the context of involuntary mental health care are included in the assessment of leave. This will provide more opportunities to assess leave from the perspective of care. This does not detract from the fact that leave has to occur safely, because TBS primarily serves the safety of society.

The Council advises the Minister:

- To refer to the grounds for leave that are applied during involuntary stay in a mental health care facility in the explanation to the new leave regulations;
- To include the term for taking a decision on a leave application in the leave regulations themselves;
- To let the original leave authorisation continue to apply until a decision on the new authorisation has been taken, or else to include the term for remedying the administrative negligence in the leave regulations themselves;
- To declare the hardship clause also applicable to the Article that regulates the cancellation of the leave authorisation by operation of law.

The Council takes up the conversion of the existing TBS leave assessment framework into the new leave regulations to once again bring several recommendations from earlier advice about leave to the attention:

- To allow resocialisation leave prior to the Early Release date in the event of a combined verdict, that is TBS combined with unconditional imprisonment, as well;
- To continue the leave authorisation in the event of a transfer with a positive prognosis;
- Not excluding the possibility of resocialisation leave for those who are serving a life sentence and have been placed in a Forensic Psychiatric Centre (FCP) beforehand, but to assess on a case by case basis whether leave has added value as part of the treatment plan.

*The recommendation can be obtained from the secretariat of the Council
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