



Recommendation regarding the draft legislative proposal for the Forensic Care (remedial) Act, Council for the Administration of Criminal Justice and Protection of Juveniles

Presented to : The Minister for Legal Protection
Date : 4 February 2020

Summary

The Advisory Division of the Council for the Administration of Criminal Justice and Protection of Juveniles (hereinafter referred to as 'the RSJ') has issued its recommendation regarding the draft legislative proposal for the Forensic Care (remedial) Act (*Reparatiewet forensische zorg*). The RSJ notes that the draft legislative proposal contains provisions that are relevant to the privacy of patients in forensic care. Moreover, the RSJ observes that there is not enough clarity on the legal position of patients residing in an institution other than indicated for them based on their legal title. The RSJ advises that a number of alterations should be made to the draft legislative proposal and asks for further clarification on some points.

The Minister for Legal Protection had requested the RSJ for a recommendation on the draft legislative proposal for the Forensic Care (remedial) Act in mid-December. The response of the RSJ focuses on the three topics outlined below.

Provision of personal data for policy assessment

The draft legislative proposal contains a basis to provide and process personal data, including the Citizen Service Number, for policy purposes of the Ministry of Justice and Security. According to the RSJ, the necessity and scope of this regulation needs to be explained in further detail. In addition, the RSJ recommends that the necessary personal data should be anonymised by default, unless this is completely inadequate for the assessment of the policy objective. Finally, the RSJ considers it too far-reaching to provide personal and other data free of charge. Therefore, the RSJ advises considering the introduction of a financial compensation.

Access to medical data by the Inspectorate of Justice and Security

One of the aims of the draft legislative proposal is to put an end to the debate taking place in practice regarding the authority of the Inspectorate of Justice and Security, particularly in connection with the right of access to medical data. The RSJ concludes that the Inspectorate must be given the opportunity to inspect medical data, insofar as this is necessary for an investigation into a specific case (incident). However, the RSJ considers it disproportionate if medical confidentiality is breached on a large scale. In addition, the RSJ recommends implementing a dispute resolution procedure if cooperation is refused, instead of the authority to impose a penalty as proposed in the draft legislative proposal.

Legal position of persons not placed under a hospital order

In cases where a patient who has not been placed under a hospital order, is admitted to an institution for the treatment of persons placed under a hospital order, it is unclear which legal framework determines the legal position of the patient concerned. It seems the legislator has intended this legal position to be determined by the Mandatory Mental Healthcare Act (*Wet verplichte geestelijke gezondheidszorg, Wvvgz*). However, the RSJ is concerned that the complaints committees, that normally work within the Mandatory Mental Healthcare Act system, are not necessarily equipped to take decisions

concerning institutions for the treatment of persons placed under a hospital order. Therefore, the RSJ advises that the legal position of persons not placed under a hospital order, but who are staying in institutions for the treatment of persons placed under a hospital order, should be explicitly clarified in a statutory regulation.

This recommendation can be consulted on the website of the RSJ: www.rsj.nl under 'Adviezen' (Advisory reports).