

## **Visit report**

**Landspítali - The National University Hospital of  
Iceland**

**Kleppur: Forensic psychiatric ward, secure  
psychiatric ward and specialised rehabilitation  
psychiatric ward**

## Summary

The Althingi Ombudsman visited the psychiatric department of Landspítali at Kleppur on the 29<sup>th</sup> – 31<sup>st</sup> October 2018. This was the Ombudsman's first visit on the basis of the OPCAT mandate, where three closed wards of the hospital were observed; the forensic psychiatric ward, the secure psychiatric ward and the specialised rehabilitation psychiatric ward.

These wards accommodate patients that generally require long-term treatment due to serious mental health problems and have, *inter alia*, been hospitalised involuntarily. Most patients have been deprived of legal competence on the basis of the Act on Legal Competence No. 71/1997 or are involuntarily hospitalised on the basis of the same Act. Moreover, some patients are sentenced to treatment in accordance with Article 62 of the General Penal Code No. 19/1940, generally on the forensic psychiatric ward.

The Ombudsman's visit brought to light various issues concerning the legal basis of the placement and treatment of patients on the aforementioned wards which in turn required closer investigation that took longer than had been anticipated. The Ombudsman's main observation being that there is no comprehensive legislation, mental health or other, pertaining to the hospitalisation and treatment of persons deprived of their liberty in Iceland, unlike e.g. in the other Nordic countries.

In principle a patient may not be treated without his/her consent or hospitalised against his/her will. However, the placement and treatment of patients with serious mental health problems may entail derogations from this principle of patient self-determination. Other restrictive measures that infringe on a person's Constitutional or human rights such as their rights to privacy/freedom may also be deemed necessary to maintain security levels within the hospital setting. However, there is not sufficient basis in Icelandic law to make such decisions.

In the report it is pointed out that even though a patient has been deprived of his/her liberty on the basis of the Legal Competence Act or a sentence, it does not, by itself, provide staff in mental health institutions with the authorisation to derogate from the principle of patient self-determination in regards to treatment. An independent evaluation on the necessity of involuntary treatment must always take place.

Involuntary treatment as defined by Icelandic law pertains only to medical interventions, therefore it does not suffice to categorise other coercive measures as treatment. The use of coercive measures is subject to strict conditions according to general human rights standards and international legal development established, *inter alia*, in the provisions of the Constitution, particularly when it comes to vulnerable groups such as people with mental disabilities.

The Ombudsman's visit revealed that the boundaries between therapeutic and security interventions can be unclear when it comes to decisions concerning the treatment and lives of patients in the mental health wards at Kleppur. Although sufficient legal basis is lacking for the use of coercive measures, there were no indications of inhuman or degrading treatment towards the patients.

It must be emphasized that actions which may infringe patients' constitutional rights must have an adequate legal basis. The Ombudsman recommends that the hospital clarifies which decisions are made on the basis of therapeutic intervention, within the remit of the Patients' Rights Act, and which decisions are taken in relation to security measures. The hospital should then inform the relevant ministry of its findings and in which instances the hospital considers it necessary to amend the law.

Moreover, it is recommended that the hospital analyses the nature and content of decisions made in relation to the treatment and hospitalisation of patients, in order to clarify which decisions are defined as administrative decisions in the meaning of the Administrative Procedures Act. It must be ensured that decision-making procedures are consistent with the provisions of the Administrative Procedures Act and that staff and patients are informed of these rules and procedures.

The patients in the three wards in Kleppur generally appear to enjoy good living conditions. There are various recreational activities on offer, good leisure facilities and the rehabilitation management is well structured with competent personnel. However, recommendations are put forth regarding safety issues in the patients' environment and pertaining to staffing levels as nonspecialised staff have had to take on medical tasks, e.g. administering medication.

Furthermore, it is recommended that the hospital ensures that information regarding the statutory complaint procedures, in relation to the service and treatment provided on the wards, is accessible to patients and their relatives. It is necessary to identify the means available to patients to file a complaint or appeal a decision/action as well as establishing a structured recording procedure for such cases. Likewise the staff need to be informed of and aware of these safeguarding measures.

Certain recommendations are specifically addressed to the Minister of Health, the Minister of Justice as well as the Althingi, first and foremost pertaining to legislative issues disclosed in the report. These issues, *inter alia*, relate to the legal status of individuals sentenced according to Article 62 of the General Penal Code and the legal basis to use force or coercion or make decisions which infringe on people's right to privacy in regards to those who have been deprived of their liberty. Lastly, the Minister of Social Affairs' attention is drawn to the lack of suitable housing for individuals who are sentenced to treatment but are in recovery, which may result in their hospitalisation lasting longer and being more burdensome than necessary.

The Ombudsman will continue to monitor the progress of these matters but requests that the hospital and other relevant authorities inform him of their reactions to the report before May 1, 2020.

## Table of contents

1. OPCAT-monitoring of places where individuals reside who have been deprived of their liberty
2. Summary
3. Preparation and execution of the visit
4. General information on the three psychiatric wards
  - 4.1 Introduction
  - 4.2 The forensic psychiatric ward
  - 4.3 The secure psychiatric ward
  - 4.4 The specialised rehabilitation psychiatric ward
5. Applicable human rights provisions
  - 5.1 General
  - 5.2 Torture and other inhuman treatment
  - 5.3 Personal liberty and the right to respect for private life, home and family life
6. The extent of legal issues in relation to the report
7. The legal framework for the three psychiatric wards in Kleppur
  - 7.1 The principle of patient self-determination and considerations on the specific nature of mental health care
  - 7.2 Grounds of placement
    - 7.2.1 General principles on the deprivation of liberty due to mental illness or lack of mental capacity
    - 7.2.2 Judge's decision on a placement in an appropriate institution
    - 7.2.3 Involuntary commitment
    - 7.2.4 Deprivation of personal competence
  - 7.3 Involuntary treatment
    - 7.3.1 Derogations from the principle of patient self-determination
    - 7.3.2 Legal basis for forced medication or other involuntary treatment
    - 7.3.3 Human rights standards and considerations on proportionality in forced medication and other involuntary treatment
    - 7.3.4 Patients' right to challenge decisions on forced treatment before the courts
  - 7.4 Other interventions, coercion and use of force
  - 7.5 Administrative Procedures Act and rules on administrative proceedings
8. Implementation of interventions, coercion and use of force
  - 8.1 Introduction
  - 8.2 Hospital rules on interventions, coercion and use of force
  - 8.3 Main types of interventions, coercion and other use of force
    - 8.3.1 General
    - 8.3.2 Active monitoring
  - 8.4 Extent of coercion and other use of force and the registration of such incidents
  - 8.5 Measures to reduce coercion
  - 8.6 Other interventions into patients' liberty and private life
    - 8.6.1 General
    - 8.6.2 The departmental rules

- 8.6.3 Restrictions on the freedom of movement
  - 8.6.4 Restrictions on communication with the outside world
  - 8.6.5 Restrictions on private life
- 8.7 Clear legal basis is necessary to restrict patients' rights
- 8.8 Recommendations
- 9 Conditions
  - 9.1 Environment and facilities
  - 9.2 Security
  - 9.3 Financial conditions of patients in the three wards
  - 9.4 Recommendations
- 10 Activity: Recreation and rehabilitation
  - 10.1 General
  - 10.2 Recommendations
- 11 Staffing and atmosphere
  - 11.1 General
  - 11.2 Recommendations
- 12 Information provided to patients and immediate family members
  - 12.1 General
  - 12.2 Recommendations
- 13 The right to have acts and decisions reviewed and to submit complaints
  - 13.1 Meaning of clear and effective complaints and appeals procedure
  - 13.2 Administrative Procedures Act No. 37/1993
  - 13.3 Administrative decisions
  - 13.4 Patients' complaints and appeals procedure
  - 13.5 Knowledge of complaints and appeals procedure among patients and hospital staff
  - 13.6 Recommendations
- 14 Legislative matters
  - Recommendations to the ministers and Althingi
- 15 Lack of social housing
  - Recommendations to the Minister of Social Affairs
- 16 Follow up