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Meeting: 1514th meeting (December 2024) (DH)

Item reference: Action Plan (14/10/2024)

Communication from Denmark concerning the case of Aggerholm v. Denmark (Application No. 45439/18)

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Réunion : 1514^e réunion (décembre 2024) (DH)

Référence du point : Plan d'action (14/10/2024)

Communication du Danemark concernant l'affaire Aggerholm c. Danemark (requête n° 45439/18) (**anglais uniquement**)



Enhed: Psykiatri og Misbrug
Sagsbeh.: nff
Koordineret med:
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Dok. nr.: 225546
Dato: 11-10-2024

Action plan: Aggerholm v. Denmark, Application no. 45439/18

1. Description of the case

The present case concerns a psychiatric patient who was strapped to a restraint bed (*tvangsfikseret*) in a psychiatric hospital for 22 hours and 50 minutes between 8 and 9 February 2013.

In September 2020 the European Court of Human Rights (hereinafter “the Court”) held that there had been a violation of Article 3 on prohibition of inhumane or degrading treatment in the European Convention of Human Rights (hereinafter “the Convention”).

The Government of Denmark (hereinafter “the Government”) accepted the judgment in December 2020 and submitted an action plan regarding the implementation of the judgement in June 2021, a consolidated action plan in March 2022 as well as a consolidated action plan in March 2023.

This action report is a consolidated version of the action plan from June 2021 and the consolidated action plans from March 2022 and March 2023 and it contains all measures taken in response to the shortcomings identified in the judgment by the Court.

2. Individual measures

The applicant was awarded EUR 10,000 for non-pecuniary damage and EUR 4,000 in respect of costs and expenses plus any tax that may be chargeable to the applicant on the amounts.

The said amounts were transferred to the applicant on 22 December 2020.

3. General measures

In the judgment the Court raised three issues that the national courts failed to address, which were crucial for the assessment of whether the continuation of the restraint, and

its duration for almost 23 hours, was “strictly necessary” to prevent immediate or imminent harm to others.

3.1 Overturned decisions by The Psychiatric Complaints Board

The Psychiatric Patient Complaints Board (*Det Psykiatriske Patientklagenævn*) is an independent board which processes complaints from psychiatric patients regarding the use of coercive measures or coercive treatment that has occurred during hospitalization at a psychiatric ward.

The Psychiatric Complaints Board publishes an annual report with overview of the cases the board has processed in accordance with section 39 (1) of the Mental Health Act.

In the report of 2022, it appears that the percentage of overturned decisions regarding both the *decision* to use belt restraints and the *duration* of the use of belt restraints is 47 %. In 2021, the percentage of overturned decisions was 29 % regarding the decision to use belt restraints and 9 % regarding the duration of the use of belt restraints. The report of 2023 will be made public in the beginning of November 2024. It will appear from the report that although the percentage of overturned decisions to use belt restraints has dropped to 40 %, the percentage for overturned decisions regarding the duration of the use of belt restraints has risen to 50 %.

The Government is pleased that The Psychiatric Complaints Board contributes to secure psychiatric patients’ legal rights by assessing the decisions to use belt restraints and the duration of belt restraints. The Government however acknowledges that the percentage of overturned decisions by the board especially regarding the duration of the use of belt restraints is high. The Government assumes that there are different factors – here amongst a possible question of inadequate record-keeping by the health professionals - that may cause the high percentage, but cannot at this time draw any final conclusions as to the leading reasons why.

In order to map the reasons for the high percentage of overturned decisions, the Ministry of the Interior and Health has initiated a dialogue with The Psychiatric Patient Complaints Board. The Government will on the basis hereof make for example adjustments or

elaborations of relevant applicable guidelines or look into other initiatives if deemed necessary.

3.2 Updated statistics on the use of coercion and a new goal to reduce coercion

The Health Authority monitors the development of the use of coercion in psychiatric wards and publishes a report on the development once a year.

In the newest report regarding the use of coercion in 2023, the number of persons exposed to belt restraints has decreased from an average of 2.035 in 2011-2013 to 1.177 persons in 2022. The number of persons exposed to belt restraint further experienced a slight reduction in 2023 to 1.097 persons. This illustrates a reduction of over 40% in the number of persons exposed to belt restraints in 2011-2013 to 2023 (from 2.035 to 1.097 persons).

On a national level the number of times belt restraint was used has overall decreased. Belt restraint was used 5.680 in 2011-2013, 3.712 times in 2020, 4.537 times in 2021, 4.904 times in 2022 and 4.208 times in 2023. Thus, despite the fact that the number of times belt restraint were used increased from 2020 to 2022, there has been a slight decrease from 2022 to 2023.

However, it is important to note that the use of restraints and forced medication has increased along with the decrease of belt restraints.

Hence, the Government acknowledges the challenges the Government faces in reaching the goals to reduce coercion in psychiatric wards. As mentioned in the Government's action report from June 2023, the Government has been working towards reducing coercion for a number of years.

Thus, in 2014 the Government decided upon an ambitious goal to reduce belt restraints by 50% in 2020. As noted in the action report from 2023, this goal unfortunately was not met. As a part of actively seeking to reduce compulsory restraints, the Government has set a new and ambitious goal to reduce coercive measures by 30% by 2030 as a part of the 10-year plan. This goal includes all kinds of coercive measures, including belts, restraints, forced medication etc.

In order to ensure correct and effective application of the new guidelines and measures in order to reach the 30% reduction in 2030, the five Danish regions, who carry the responsibility to secure and improve psychiatric hospital service, have received funding to support their efforts towards achieving the goal to reduce coercion.

The Government will also develop a new model for monitoring the use of different types of coercive measures. The national task force established in 2014 by the Health Authority (*Task Force for Psykiatriområdet*) will continue to monitor and follow the developments in the psychiatric field with a particular focus on the use of coercion in psychiatric departments and discuss potential issues or ways of improvement in order to reach the goal.

Finally, the Government has concluded an agreement of a 10-year plan to improve the psychiatric and mental health field. The Government will shortly begin the negotiations of the last step of the 10-year plan with an overall plan on the psychiatric field towards 2030, see section 3.3 below.

3.3. The 10-year plan to improve the psychiatric and mental health field

In September 2022 the Government and a majority of the political parties concluded an agreement of a 10-year plan to improve the psychiatric and mental health field.

The 10-year plan is an agreement based on a report from the Danish Health Authority (*Sundhedsstyrelsen*) and the National Board of Social Service (*Social- og Boligstyrelsen*) which outlines the primary challenges and improvement points as well as potential solutions regarding mental illness and mental health in Denmark. The agreement is a long-term plan focusing on the direction for mental health treatment in Denmark as well as prevention and a stronger coherence between general practice, psychiatric hospital services and the social services. In connection with the preparation of the report, the Danish Health Authority and the National Board of Social Service obtained information on an ongoing basis from among others professional associations and patient organizations.

In November 2023, the Government concluded the next step of the 10-year plan with a new agreement with a particular focus on among other things minor psychiatric patients, urgent care and suicide prevention.

The Government will shortly begin the negotiation of the last and final step of the 10-year plan towards 2030 with the purpose of ensuring the necessary capacity and quality of care as well as the reduction in coercion in the psychiatric field.

The Government has prioritized over 3 billion Danish kroner (EUR 400 million) for a fully funded 10-year plan.

One of the main goals in the 10-year plan to improve the psychiatric field is to reduce coercive measures.

The Government is aware that the reduction in coercive measures is yet to be seen in practice, as the 10-year plan consists of initiatives with a focus on long-term solutions and improvements, why results in the psychiatric field cannot be expected within a few years.

3.4. Recent case law of domestic courts

As mentioned in the consolidated action plan of March 2023, the Government notes, that the District courts, the High Courts and the Supreme Court as well as the Danish Court Administration have been notified of the Court's judgment in the present case. The Court's judgment in the present case is thus part of the national courts' proceedings in similar cases.

The Government would like to present the following examples of recent case law from the domestic courts that, in the view of the Government, fully takes into account considerations of Article 3 of the Convention when reviewing the legality of initiation and length of belt fixations and when awarding compensation for unlawful restraints.

The Supreme Court of 10 May 2022, Case no. BS-20222/2021-HJR

The judgment of the Supreme Court concerned compensation for the unlawful restraint of the patient that lasted for 5 days and constituted a violation of Article 3 of the Convention. The Supreme Court found that the compensation should be fixed in light of

Article 41 of the Convention and the jurisprudence of the Court. The Supreme Court assessed what would be reasonable in the circumstances of the case and to the context of the violation and awarded the patient compensation of a total of 40.000 DKK (approximately 5.350 EUR).

The Supreme Court of 8 November 2021, Case no. BS-43804/2020-HJR

The judgment of the Supreme Court concerned the lawfulness of two restraints of the patient, who was a minor, that respectively lasted for 19,5 hours and 10,5 hours. The Supreme Court assessed the two restraints individually and found that both incidences of restraint had been lawful. The Supreme Court furthermore found that there was no reason to assume, that Article 3 of the Convention had been violated.

The Eastern High Court of 23 December 2020, Case no. BS-12127/2020-OLR

In this case, the Eastern High Court found that an unlawful belt restraint of the patient for 1,5 hours constituted a violation of Article 3 of the Convention. In light of Article 41 of the Convention and the jurisprudence of the Court, the Eastern High Court awarded the patient a total of 7.500 DKK (approximately 1.000 EUR) in compensation.

The City Court of Holbæk of 19 February 2020, Case no. BS-29423/2019-HBK

The judgment of the City Court of Holbæk concerned compensation for an unlawful restraint of the patient that had lasted for 1,5 hours and constituted a violation of Article 3 of the Convention. The City Court of Holbæk awarded the patient a total of 1.000 DKK (approximately 135 EUR) in compensation, *inter alia*, in light the short duration of the restraint.

The City Court of Næstved of 3 September 2019, Case no. BS-14701/2019-NAE

The City Court of Næstved assessed the legality of the restraint of the applicant that lasted for around 4 days. The City Court of Næstved found that the restraint had been unlawful and referred to the jurisprudence of the Court from which it, *inter alia*, follows, that restraint must only be used as a last resort to prevent harm on others or of the patient and that the restraint cannot be upheld for longer than strictly necessary. The City Court of Næstved awarded the patient compensation of a total of 10.000 DKK (approximately 1.350 EUR).

The City Court of Næstved of 3 September 2019, Case no. BS-23268/2019-NAE

In this case, the City Court of Næstved assessed the legality of the restraint of the patient that lasted for two weeks. With reference to the jurisprudence of the Court regarding Article 3 and the use of restraint, hereunder that restraint must only be used as a last resort to prevent harm on others or of the patient and that the restraint cannot be upheld for longer than strictly necessary, the City Court of Næstved found the restraint to have been lawful.

4. Conclusion

It is the position of the Government that the necessary individual and general measures have been taken. The Government closely monitors the development of the use of coercion in psychiatric wards.

The Government has initiated a dialogue with the Psychiatric Patient Complaints Board to investigate the reasons for the high percentage of overturned decisions and will make further adjustments or elaborations of for example relevant applicable guidelines or look into other initiatives if deemed necessary.

The Government has set a new and ambitious goal to reduce coercive measures by 30% by 2030 as a part of the 10-year plan and has concluded political agreements to improve the psychiatric and mental health field. The Danish regions, who carry the responsibility to secure and improve psychiatric hospital service, have received funding to support their efforts towards achieving the goal.

Finally, the Government has presented recent case law that shows that the domestic courts fully takes into account considerations of Article 3 of the Convention when reviewing the legality of initiation and length of belt fixations and when awarding compensation for unlawful restraints.