Evaluation of new legislation for compulsory forensic psychiatric treatment

Summary

In 1997 new legislation was adopted to regulate the internal and external legal position of delinquents convicted to be detained in institutions for forensic psychiatric treatment. This report concerns the first evaluation after three years of experience with the new legislation.

The internal legal position specifies the rights of the patients during the course of execution of this penal law measure. More specifically it defines the freedom of movement within the treatment institution and the scope for self determination of delinquents committed to such institutions. Alternatively the internal legal position also defines the limits of authority of the institutions over its patients.

The external legal position specifies the rules of legal status transition when the convicted person enters or is released from the penal commitment to forensic psychiatric treatment. Some new entry and exit modalities were established, most importantly new legislation for commitment without compulsory admission to the treatment centre and a form of conditional discharge in which the detention order is lifted.

The new legislation was established for the purpose of strengthening the internal legal position of the convicts, while in the mean time warranting the security of society and the opportunities for effective forensic psychiatric treatment. The legislation expressly attempts to balance these partly conflicting values of security, treatment and legal position. On the one hand it has largely expanded the legal rights of the patients within the institutions. Legal procedures have been instituted for complaints about possible infringements on those rights. On the other hand the legislation tries to safeguard security as a primary concern and it has also tried to differentiate between the realms of nursing and forensic psychiatric treatment. Being nursed is legally imposed on the patient, being treated is considered to depend on the patients (implicit) consent. Legal position is primarily specified in the context of being nursed, whereas it is much more marginal in the context of treatment.

Various groups of persons professionally involved in the imposition and execution of the penal measure have been addressed by means of interviews and questionaires as concerns their experiences with and ideas about the new legislature. Respondents to this evaluation research consist of persons working in the treatment institutions, judges and public prosecutors, defense attorneys and complaint boards, and probationers.

Generally speaking there is much appreciation of both the process of introducing and implementing the new legislation for the internal legal position. Treatment institutions have been intensively involved in the development of the new legislature. This has resulted in a general willingness of workers in the treatment field to conform to the rules of the legislation. A majority of all respondents also feels that the new legislation has succeeded to strike a feasible compromise between the partly contradictory aims of the penal measure.

The new legislation for the internal legal position has resulted in a considerable increase of complaints to the relevant judicial boards. It appears, however, that the treatment institutions have responded in different ways to the legislation, dependent upon their particular outlook on security and treatment. The research has lead to the conclusion that some unification of legal position practices should be attempted and that more clarification is needed to distinguish between the fields of 'voluntary' participation in treatment and the compulsory incarceration in the treatment institution. A clearer and less ambiguous legal position within the specific context of treatment should be developed.

As regards the external legal position it appears that the new forms of 'conditional' commitment to and release of the penal law measure have led to an increase of extramural execution. In particular the new options seem to have resulted in ameliorating the problematic tendency of release from the penal measure against the advice of the treatment institution. The number of these so called 'contrary releases' has decreased considerably since the adoption of the new legislature.