Mental health law reform and compulsory treatment in The Netherlands

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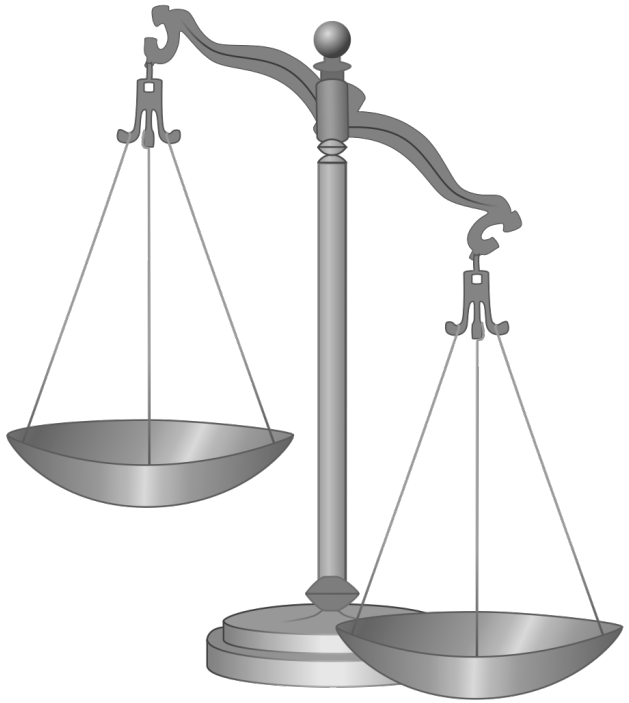
The UN-CRPD

- **Art. 12 Legal capacity:** The Netherlands interprets Article 12 as restricting substitute decision-making arrangements to cases where such measures are necessary, as a last resort and subject to safeguards.

- **Art. 14 Liberty and security of person:** The Netherlands declares its understanding that the Convention allows for compulsory care or treatment of persons, including measures to treat mental illnesses, when circumstances render treatment of this kind necessary as a last resort, and the treatment is subject to legal safeguards.

Law on special admissions to psychiatric hospitals (Bopz)

Wellbeing



Autonomy

- Difficult and long bureaucratic procedures
- Only commitment, not treatment

Law on Compulsory Mental Healthcare

- Wet verplichte geestelijke gezondheidszorg (Wvggz)
- Takes effect on January 1st 2020, replaces Bopz
- Persons with mental disorders, not persons with geriatric conditions or intellectual disabilities (Wet zorg en dwang)

- **Aims:** promote autonomy, provide support, improve integration in the community, reduce the use of coercion
- **New feature:** ambulatory coercion

Respect for autonomy (art. 3.3)

- The wishes and preferences of the service user must be honored…

...unless…

- she is not competent to consent (no criteria given)

OR

- she poses a risk to herself or others

The aims of compulsory care (art. 3.4)

- to avert a crisis situation
- to avert a “serious disadvantage”
- to stabilize the mental health of the person
- to restore the mental health of the person in such a way that he regains his autonomy as much as possible
- to stabilize or restore physical health

The scope of compulsory care (art 3.2)

- all the medical stuff
- involuntary hospital admission
- limiting freedom of movement
- personal surveillance
- searches of clothes and body
- home searches for behavior-influencing substances or dangerous objects
- limiting the freedom to arrange one's own life
- limiting the right to have visitors

The criteria for compulsory care

Compulsory care is permitted if (and only if)

- due to a mental disorder, the behavior of the person leads to a "serious disadvantage"
- there are no possibilities for care on a voluntary basis
- there are no less restrictive alternatives
- the provision of (compulsory) care is proportional to the intended effect
- it is reasonable to expect that the (compulsory) care will have the intended effect

Serious disadvantage (art. 1.1)

- The existence or significant risk of:

a. a danger to life, serious personal injury, serious psychological, material, immaterial or financial damage, serious neglect or social loss, seriously disturbed development for or of the person concerned or another person
b. a danger to the safety of the person, whether or not because he is under the influence of another person
c. the situation that the person's behavior evokes aggression from others
d. the situation that the general safety of persons or goods is at risk

Taking stock: substantial safeguards

- Very broad scope of compulsory care
- Low threshold for compulsory care (serious disadvantage)
- Competence plays virtually no role; ‘diagnosis + risk’ is central
- Service users’ will and preferences play virtually no role
- Risk to self and risk to others have the same justificatory force; no differentiation between admission and treatment in case of risk to others

Procedural safeguards

1. Care authorization
   - clinical director, independent psychiatrist, college of mayor and alderman, public defender, advocates, judge
   - max. 6 months (other aims), 12 months (crisis), 2 years (if 5 years)
2. Crisis measure
   - mayor, public defender, psychiatrist
   - max. 3 days, extension of max. 3 weeks
3. Temporary compulsion (in anticipation of a crisis measure)
   - emergency services, treating psychiatrist or police
   - max. 18 hours
4. Emergency care
   - treating psychiatrist, clinical director
   - max. 12 hours, 3 days

Conclusion

- The law errs on two sides:
  - The autonomy of service users is not protected (low substantial threshold)
  - Early intervention is still difficult (high procedural threshold)

➢ Reduce procedural and increase substantial safeguards
  - grant rights to service users
  - provide guidance to mental health professionals

Thanks!

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