

Children's Rights in Mental Healthcare Should Be Better Safeguarded

During the year, the Parliamentary Ombudsman published three reports from visits to hospital departments where children and adolescents can be admitted without their consent.¹ The visit reports show that legal safeguards for children admitted to psychiatric hospital departments should be strengthened.

The human rights of children and adolescents when they are admitted without consent

When children are admitted to institutions without their consent, this places restrictions on their freedom and opportunity to decide for themselves. Nevertheless, all children who are admitted to a health institution have the right to be heard in respect of matters that concern them.² Children's opinions must be given emphasis in accordance with their age and maturity. The child's best interest must be a primary consideration in all actions and decisions affecting children.³

Children and youth who are deprived of their liberty are additionally vulnerable to violations of their integrity and therefore have a right to special protection. According to the UN Convention on the Rights of the Child, children who have been deprived of their liberty must be treated with humanity and respect for their inherent dignity.⁴ Deprivation of liberty must

take into consideration the child's needs in relation to his/her age. Children are more vulnerable than adults and are therefore granted greater protection in respect of their personal integrity.⁵ There is a much lower threshold before the prohibition against torture and inhuman or degrading treatment is breached in regard to children.⁶

The UN has established special regulations for the protection of children that have been deprived of their liberty; these are known as the Havana Rules.⁷ The rules establish that children should have a physical environment that makes due regard to the need for privacy, sensory stimuli, opportunity for association with peers and participation in physical exercise and leisure-time activities. Children deprived of their freedom has the right to compulsory education. This must be adapted to children with disabilities. Children must also have the opportunity to spend time outdoors every

1 One of the visits was conducted in October 2019; however, the visit report was published in 2020.

2 Constitution Section 104 par. 1 and the UN Convention on the Rights of the Child article 12.

3 Constitution Section 104 par. 2 and the UN Convention on the Rights of the Child article 3 no. 1.

4 UN Convention on the Rights of the Child article 37 (c).

5 Constitution Section 104 par. 3.

6 UN Special Rapporteur on torture, report to the UN General Assembly, 5 March 2015, A/HRC/28/68, section 31–33.

7 UN Regulations for the Protection of Juveniles Deprived of their Liberty (Havana Rules), adopted by General Assembly resolution 45/113 of 14 December 1990.

day, with provisions for physical activity and other recreational activity. Children's right to healthcare must be safeguarded, and medical treatment should, in principle, only be given on the basis of informed consent from the child. Children must also have the opportunity to stay in contact with family, friends and relevant organisations, through visits or by telephone. The use of intrusive coercion and force must only take place in extraordinary circumstances after other measures have been tried, and only within what is permitted by law.

The Mental Health Care Act provides few regulations that are adapted to children who have been deprived of their liberty. The challenges this represents will be further examined in the final part of the article.

Visits indicate that children need better protection against intrusive coercion

Intrusive force and coercion measures must only be used on children if there is an immediate risk that they can harm themselves or others, as a last resort and for the shortest time necessary.⁸ It must only be used in cases that are clearly warranted by laws and regulations, and there are strict requirements in respect of documentation. Several human rights agencies have recommended a prohibition of coercive measures, solitary confinement and similar measures imposed on children.⁹ The European Committee for the Prevention of Torture has stated that it is only acceptable to restrain children until the risk of injury has passed.¹⁰



The NPM conducting an inspection during a visit to a mental healthcare section for children and adolescents.

However, the Mental Health Care Act allows for administration of strong medication without the consent of the child in emergency situations.¹¹ Children over 16 years of age can also be restrained with straps or isolated in a room. It is additionally problematic that Norwegian law permits the use of particularly intrusive coercion methods, such as straps, to prevent damage to objects. Human rights considerations indicate that such intrusive measures are only permitted to prevent immediate risk of injury to persons.¹²

Findings from our visits indicate that children admitted to mental healthcare institutions can be subjected to very intrusive forms of coercion. During one of our visits, we found that children under 16 years old had been subjected to unlawful use of restraint belts and segregation.¹³ We also found that an adolescent over 16 years old had been brought to the hospital by the police wearing

8 ECHR judgement of 19 Feb 2015 *MS v. Croatia* (no. 2), application no. 75450/12, section 104; Havana Rules, rule 64 and UN Special Rapporteur on torture, Annual Report to the UN General Assembly 2015, A/HRC/28/68, section 86 (f).

9 UN Special Rapporteur on torture, Annual Report to the UN General Assembly for 2013, A/HRC/22/53, page 14–15, section 63 and page 23, section 89 (b), and for 2015, A/HRC/28/68, section 84 (d). See also UN Committee Against Torture, recommendations to New Zealand, 2 June 2015, CAT/C/NZL/CO/6, section 15 (b).

10 See Committee on the Prevention of Torture (CPT) report after a visit to Poland in 2017 CPT/Inf/ (2018) 39, section 134.

11 Mental Health Care Act Section 4–8.

12 In appeal cases against the use of restraint straps on adult patients, ECHR has stated that: "... such measures be employed as a matter of last resort and when their application is the only means to prevent immediate or imminent harm to the patient or to others." (*M.S. v. Croatia* (no. 2), complaint no. 75450/12, judgement of 19 February 2015, section 104. See also Council of Europe Committee of Ministers recommendation Rec (2004) article 27 no. (1).

13 The Parliamentary Ombudsman's report after the visit to Helse Stavanger HF, Section for children and adolescent mental health care. 8–10 and 29–30 October 2019. The unlawful circumstances had ended at the time of the visit.



A segregation room used for children at one of the places we have visited.

a spit hood, and was later placed in restraint belts. The adolescent was restrained for five hours and fifteen minutes. It was not sufficiently documented as to why it had been necessary to keep the adolescent restrained for four and a half hours after the adolescent had fallen asleep. This type of situation could potentially amount to a violation of the prohibition against inhuman treatment.¹⁴

The use of segregation is another intrusive measure used in child and adolescent psychiatry. Some adolescents are subjected to segregation for long periods, with repeated measures and a great deal of coercion. At two of the three places we visited, we criticised the use of segregation. The segregation zones at one of the places was designed in such a way that it appeared threatening and frightening.¹⁵ We were particularly critical of some segregation rooms that resembled isolation cells. The Ombudsman stated that long-term placement in such rooms was unacceptable and represented a risk of inhuman treatment. The hospital has subsequently improved the segregation zones and changed segregation routines.

What is segregation?

Segregation in Norwegian mental health care means that the patient is fully or partially segregated from other patients and only has contact with health personnel. The measure can be introduced without the consent of the patient, in the patient's room or in a segregation zone. A segregation zone is an area with one or several beds that is separated from other parts of the institution, normally with a lockable door. Patients that are admitted to a segregation zone can be refused access to common rooms in the ordinary part of the section and will normally be unable to have social contact with other patients and personnel.

Norway is one of few countries that has a distinct set of enforcement regulations related to segregation. Segregation is used both as a control measure to protect patients or others against aggressive behaviour, and as a treatment measure with the idea that reduced sensory impressions will provide calm for the patient.

Our findings also showed that children are subjected to intrusive treatment measures without their consent, such as force-feeding where the patient suffers from a serious eating disorder. For treatment not to violate the child's right to personal integrity, the treatment must be *necessary to prevent serious harm to health*. The method of how treatment is carried out must also be proportional.¹⁶ In two of our visits we found examples of situations that gave grounds for concern that force-feeding was carried out without the measure

14 See ECHR judgement *Bures v. Czech Republic*, application no. 37679/08, judgement of 18 October 2012, section 102–104 and *Aggerholm v. Denmark*, application no 45439/18, 1 September 2020, section 95–115.

15 The Parliamentary Ombudsman's report after the visit to Helse Stavanger HF, Section for children and adolescent mental health care, 8–10 and 29–30 October 2019.

16 Forcibly administered treatment can be in violation of the European Convention on Human Rights article 3, see ECHR judgement in *Herczegfalvy v. Austria*, application no. 10533/83, 24 September 1992, section 82. Enforce treatment may also breach European Convention on Human Rights article 8 no. 2. See ECHR judgement *X v. Finland*, 3 July 2012, application no. 34806/04.

being strictly necessary. In some cases, significant physical coercion was applied to carry out the force-feeding.

One of the visits gave particular grounds for concern. The concern was in relation to the sum of intrusive measures as part of treatment for eating disorders.¹⁷ The Ombudsman pointed out the fact that staff did not feel they had adequate competence in the methods on which the treatment measures were based. The institute's methods also included other treatment measures with a questionable or absent statutory basis. Among other things, some activities were made reliant on patients completing meals without this having any medical foundation. It is problematic if the course of treatment is organised in a way that undermines children and adolescents' right to activities.¹⁸ In some cases, adolescents' bathrooms were locked and they had to ask staff for permission to go to the toilet. Both the professional grounds and statutory basis for this practice were unclear.

Children have the right to protection against serious abuse such as violence, neglect and sexual abuse.¹⁹ Places where children are admitted against their consent have the responsibility to protect children against such violations.²⁰ Our findings from visits indicate that there is a need to do more to protect children and adolescents against such incidents whilst they are admitted to a ward. The Ombudsman has requested clear routines to prevent violence and abuse. We have highlighted the need to ensure that staff feel free to speak to one another regarding how they should act in relation to vulnerable children and adolescents.

Good practices for safeguarding the needs of children

The Ombudsman's findings this year have also shown examples of institutions that have been successful in offering treatment to children and adolescents that safeguards fundamental rights. During one visit, we found that the ward had created safe and caring frameworks for children.²¹ The ward's decision not to be approved for enforced admissions had had several positive consequences for how children and adolescents were safeguarded. Major emphasis was placed on creating a situation in which the children themselves would wish to accept treatment. Activities organised by the ward were good and varied. The ward organised regular activities such as gym sessions and various voluntary activities – the adolescents were given the opportunity to influence in these. The exit doors were unlocked. The ward had made a



The common area at the children and youth ward, Levanger Hospital.

17 The Parliamentary Ombudsman's report after the visit to St. Olav's Hospital, Children and adolescent psychiatric clinic, Lian, 25–27 February 2020, chapter 12.

18 UN Convention on the Rights of the Child article 31.

19 See report by UN independent expert Manfred Nowak on children who are deprived of their liberty, A/74/136, Report to UN General Assembly 11 June 2019, section 102.

20 UN Havana Rules, rule 87 (c) and (e), Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, adopted October 2007 (Norway became a signatory to the convention on 1 October 2018). See also Specialist Health Service Act Section 2–1 (f), which stipulates that "Regional health services shall ensure that specialist health services are capable of precluding, uncovering and preventing violence and sexual abuse".

21 The Parliamentary Ombudsman's report after the visit to the children and youth ward, Levanger hospital, 10–12 February 2020.

great deal of effort to avoid physical confines with a strict security character, sterile surroundings and locked doors. The premises were well maintained, with appealing colours, very pleasant furnishings, and a homely atmosphere.

The ward worked effectively on providing children and adolescents with detailed information about their rights, daily routines and the health treatment offered. The findings indicated that children and adolescents, to a significant degree, were listened to and allowed to participate in deciding on matters important to them. Strengthening the child's right to be heard and to take part in decisions affecting it, is an important measure to ensure that children's rights are safeguarded.

Complaints and supervision mechanisms that safeguard children

Effective complaint and supervision mechanisms are important in safeguarding children and adolescents' legal protections and to prevent violations of their integrity.²² The Parliamentary Ombudsman's findings have shown that the local control commissions, whose purpose is to ensure children's legal safeguards in mental healthcare, lack a common approach to children admitted to institutions, and that the practices of some commissions are problematic in relation to children's legal protection. The findings indicate that several control commissions have not established practices for visiting the wards where the patients are staying. This is problematic as it implies that the commissions are not in direct contact with the patients. It also increases the risk that the commissions overlook deplorable conditions that can only be discovered through physical inspections. The Ombudsman has concluded that some control commissions have interpreted their role too narrowly. For example, some commissions have understood that it is outside of their scope of

work to criticise challenges related to the physical construction of the hospital buildings.

Children under 16 years of age have weaker complaint rights than adults; however, children over 12 years of age who disagree with their admission, can complain to the Control Commission. Our findings indicate that some institutions and control commissions lack routines to establish whether children agree or disagree with their admission.

At the same time, we have found examples of supervisory mechanisms carrying out effective supervision of the circumstances pertaining to children. For example, a County Governor's office had for some time followed up one of the institution's practices for application of coercive measures and segregation of children. A local Control Commission had organised its work in a way that made it easily accessible to children and adapted to children's needs. The Control Commission had also contributed to positive changes in the ward's general routines.

The need for legislation that provides better safeguards for children in mental healthcare

The Ombudsman's findings from visits within mental healthcare for children and adolescents indicate that legislation relating to mental healthcare does not provide adequate protection of children's personal integrity and legal security. It is unclear as to how certain regulations should be applied to children, and overall, the regulations provide inadequate protection against violations of the integrity of the patient. The fundamental rights in the UN Convention on the Rights of the Child pertaining to the best interest of the child and the right of the child to be heard in all matters affecting the child, and the child's right to development are not incorporated in the law.²³ All hospitals are obliged to ensure that children's human rights are

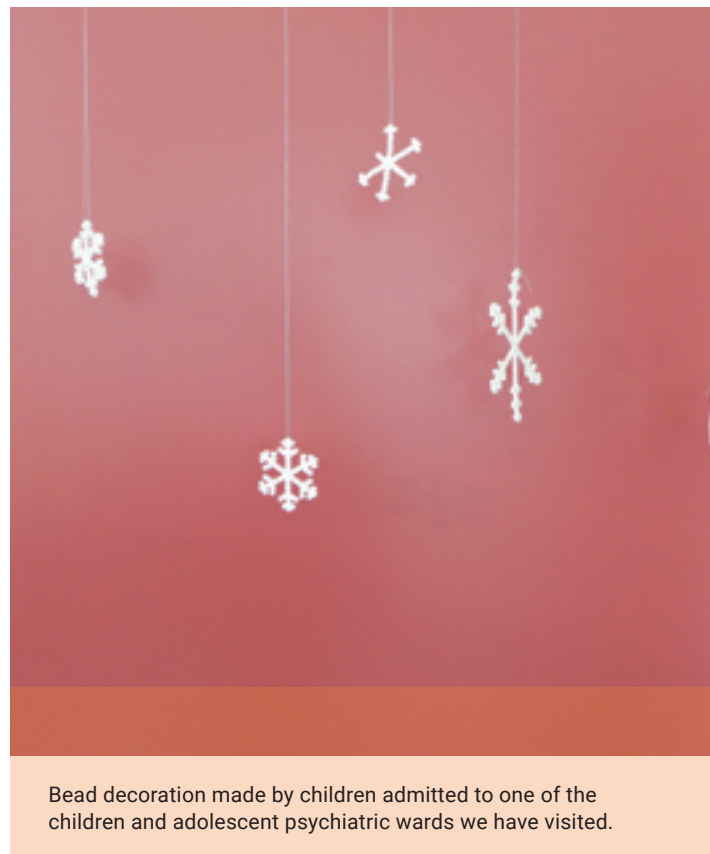
22 Havana Rules, rule 72–78, CPT, Enforced admission to a psychiatric institution, CPT/Inf (98) 12-part, section 53 and CPT, Complaints procedures, CPT/Inf (2018) 4-part.

23 The Ombudsperson for Children, in a report from 2015, has criticised the fact that the legislation reflects children's special needs and rights to a limited degree: Ombudsperson for Children, Grenseløs omsorg [*Care without boundaries*] expert report 2015, page 21.

upheld, even if the rights are not directly incorporated in the Mental Health Care Act.²⁴ However, it can be challenging for health personnel to understand how this law is to be applied so that children's human rights are fully respected.

A general issue relating to the legal safeguard of children in mental healthcare is that coercion involving children under 16 years of age is not legally considered coercion. When a child is under 16 years old, they are admitted to hospital on the parents' consent regardless of whether the admission is based on the consent of the child. The admission is therefore not covered by the strict legal conditions that regulate enforced admissions of adults.²⁵ This weakens the legal protection of children. It also makes it difficult to maintain an overview of the numbers regarding use of coercive measures against children under 16 years of age.

Additionally, intrusive treatment measures such as segregation, force-feeding or enforced medication are not legally considered coercion in relation to children under 16 years of age. These are measures dependent upon consent from parents or others with parental responsibility. Consequently, decisions regarding the use of these types of coercion are not formally recorded as an administrative decision that otherwise would provide the basis for the right to submit a complaint. During our visits we have found that an overview of measures implemented without the consent of the youngest children, are lacking, both in the wards and in the control commissions. This is unacceptable. Children are more vulnerable than adults, and



Bead decoration made by children admitted to one of the children and adolescent psychiatric wards we have visited.

deficiencies in legislation generate an increased risk of children being subjected to human rights violations. In July 2019, a legal review committee proposed changes to the regulations concerning the use of coercion and children in healthcare services.²⁶ Though the proposed amendments also present some challenges, they will, if adopted, strengthen the rights of children in several areas. In a consultation submission, the Ombudsman highlighted the need to strengthen the legal safeguards and protection of children.²⁷

24 This is in accordance with the Constitution Section 92 and Human Rights Act Sections 2 and 3.

25 Mental Health Care Act Section 2–1 cf. Patient and User's Rights Act Section 4–4.

26 NOU 2019: 14 Act relating to the use of coercion.

27 The Parliamentary Ombudsman's submission on NOU 2019: 14 Act relating to the use of coercion, 30 December 2019.