

# Summary

## The Leave of Convicted Detainees under a Hospital Order

The Advisory Board on Review of Leave from Detention under a Hospital Order  
between application and decision

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## Summary

On January 1st 2008 the Advisory Board on Review of Leave from Detention under a Hospital Order (*Adviescollege Verloftoetsing TBS*) engaged upon its task: the assessment of, and advice on, leave applications of detainees placed under a hospital order, submitted by the Forensic Psychiatric Centres. At the inception of the Advisory Board it was decided that soon after its start the functioning of the Advisory Board would be assessed. The formulation of the problem of the present investigation, which focuses on the calendar year 2008, is:

*How does the chain of the tbs leave function from the perspective of quality care in the tbs system? ['tbs' refers to the Dutch measure of detention under a hospital order]*

*What is the role of the Advisory Board on Review of Leave from Detention under a Hospital Order, hereinafter referred to as the 'Advisory Board', in this process?*

The formulation of the problem and the research questions deduced from this relate to the policy and the intended effects of the establishment of the Advisory College, to the quantitative data, to the chain in which cooperation, exchange of information and chain management take place, and to leave review and advice by the Advisory Board.

In order to answer the research questions, a study was made of professional literature, legislation, policy documents and other source material and the researchers attended a number of committee meetings as listeners, for which they in part also studied documents beforehand. The available documents from the files of 42 cases from 2008 and of 19 cases from 2009 were studied. A stratified random sample of 400 from the 1340 cases dealt with by the Advisory Board in 2008 (equally spread over the various hospitals) was analysed quantitatively. A total of 4 exploratory and 17 extensive, semi-structured interviews were held and an expert meeting with key actors from the tbs sector was organised.

Chapter 3 delineates the legal, the social and the policy context, within which the Advisory Board operates. For the tbs sector the year 2008 was a year where the tbs measure became less popular. The years 2008 and 2009 thus showed a

noticeable decrease in the number of impositions of the measure of tbs with compulsory treatment. Developments such as the sharp rise of the duration of the treatment, the decrease of the possibilities for leave and the increased chance of remaining in a long-stay ward of a tbs hospital for life, have eroded the confidence of the various parties to the criminal process in the tbs measure. Lawyers often advise their clients not to cooperate in a behavioural expert's investigation. The long waiting periods before the start of the treatment, the increased duration of the treatment and the chance of placement in a long-stay ward have rendered the measure, also in comparison to the (long) prison punishment, especially unattractive.

Not only did the number of behavioural expert's investigations decrease in 2008, the number of refusals to cooperate in an investigation also increased.

With the establishment of the Advisory Board, while maintaining ministerial responsibility, leave decisions will be professionally guaranteed as far as possible and the decision to grant a leave will be taken on behalf of the Minister. The process from the application to the leave authorisation involves a multi-layered assessment. First, the persons treating the tbs patients personally and subsequently the consultation in the internal leave assessment committee of the tbs hospital decide on the question, whether the application can be taken outside. If so, the next steps in the process are first the Leave Unit (*Verlofunit*) of the Ministry, then the Advisory Board and finally the Head of the Leave Unit, who takes a decision on behalf of the Minister of Justice.

According to the internal registration system of the Leave Unit of the Dutch National Agency of Correctional Institutions (*Dienst Justitiële Inrichtingen*) a sum total of 1576 leave applications were submitted in 2008. Not all of these leave applications were forwarded to the Advisory Board in 2008. In case the combined leave application is regarded as one application, the Advisory Board dealt with 1252 leave applications in 2008. The Advisory Board gave a positive recommendation in 87,5% of the applications. 6% of the applications were adjourned. Including follow-ups on adjournments almost 92% of the applications were given a positive recommendation and 7% a negative one. There did appear to be substantial differences between hospitals with respect to negative recommendations. The completion of the whole process on average amounted to ample 60 days.

The processing time of the Leave Unit spans the time between the date of receipt by the Leave Unit and the date of receipt of the application, accompanied by a preliminary assessment, by the Advisory Board. The *average* time period here amounts to well over 28 days. The *average* processing time of 19 days for the Advisory Board (AVT) is in line with the aim of the Advisory Board, as referred to in the *Annual Report 2008*, to give a recommendation within three weeks after receipt of the leave application. The head of the Leave Unit *on average* needs 6 days to take a decision.

The preliminary assessment by the Leave Unit is hardly used by the Advisory Board (AVT) as regards substance. This substantive preliminary assessment is formally contrary to the Decree establishing the Advisory Board (AVT). However the authority of the Minister to grant leave authorisations inevitably entails that these orders are to be prepared and issued carefully, especially in cases in which the Leave Unit on behalf of the Minister reaches a negative decision despite a positive recommendation. This, however, rarely happens. Therefore time might be saved logistically, while maintaining ministerial responsibility, by simultaneously sending leave applications to both the Leave Unit and the Advisory Board. After a recommendation by the Advisory Board the Leave Unit can still, on behalf of the Minister, issue a carefully prepared decree concerning the application for a leave authorisation. The completion of the process from the leave application to the leave assessment and the leave decision may thus be shortened by several weeks.

After the initial phase in 2008 and 2009, in which the Advisory Board (AVT) stressed its independence vis-à-vis the Agency of Correctional Institutions (DJI) and the tbs hospitals, the Advisory Board mainly focuses on establishing its professional authority. This authority is mainly based on the knowledge and skills of the behavioural members in coordination with the legal infrastructure, as guarded by the chairmen of the committees of the Advisory Board.

The recommendations of the Advisory Board do not only comprise recommendations to the Leave Unit (the Minister), but also recommendations to the hospitals on the treatment of detainees under a hospital order. The persons treating tbs patients in the hospitals tend to view these recommendations as a transgression of the border of their professional autonomy. The necessity to come back to an instruction included in that recommendation in case the same person submits another application, forces the hospitals to provide a more detailed reflection on and explanation of the treatment. The said course of action is covered by the Leave Unit. It has to stay this way, as this course of action promotes professional communication on the treatment of detainees under a hospital order. In the end this may contribute to the development of a professional treatment and leave standard in the tbs field.

The employees of tbs hospitals feel cornered by the strong reactions of politicians and of the media to leave incidents. They are afraid to make mistakes that might lead to recidivism. To them, the Advisory Board therefore both offers protection and poses a threat to their professional treatment autonomy. As a result of the focus on safety in the prescribed multidisciplinary leave assessment, in combination with political and media pressure, the hospitals tend to keep detainees under a hospital order inside for a relatively long period of time without leave. Leave applications submitted to the Advisory Board are for the most part relatively simple cases on which recommendations may be given quite quickly. The hospitals apply for (too) few leave authorisations; they may be keeping the complicated cases inside for (too) long. Consequently the treat-

ment of these detainees under a hospital order by means of leaves is being prejudiced. This selectiveness contributes to the fact that the tbs system is an altogether too closed system that has been falling out of favour in recent times, both from a social and from a criminal point of view.

The Advisory Board assesses leave applications on the basis of the Leave Assessment Framework, which focuses on the index offence, the diagnosis and the treatment. The risk analysis and the risk management in the leave application must be tuned to this.

In view of the reactions of persons treating tbs patients and of treatment coordinators in tbs hospitals to the establishment of the Advisory Board and to the Advisory Board's recommendations, on the part of the hospitals a certain need is felt for information on, and possibly training in, the drafting of leave applications.