

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the rights of persons with disabilities and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

REFERENCE:
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30 January 2017

Excellency,

We have the honour to address you in our capacity as Working Group on Arbitrary Detention; Special Rapporteur on the rights of persons with disabilities and Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, pursuant to Human Rights Council resolutions 33/30, 26/20 and 33/9.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the alleged unlawful and arbitrary deprivation of liberty of Mr. [REDACTED] on grounds of his [REDACTED] [REDACTED] which may constitute a form of torture or other ill-treatment.

According to the information received:

Mr. [REDACTED] is a [REDACTED] who on the basis of Act No. 62 of 2 July 1999 on the provision and implementation of mental health care (Mental Healthcare Act), has been committed on several occasions to the [REDACTED] without his free and informed consent and subjected to [REDACTED]. In 2006, Mr. [REDACTED] was [REDACTED]. Mr. [REDACTED] claims that in the period of this detention he has been subjected to [REDACTED].

On 9 April 2013, Mr. [REDACTED] was arrested after someone notified the police that he was "[REDACTED]" on a tram in Oslo and was forcibly taken to the [REDACTED]. Despite his refusal to provide consent for hospitalization and treatment, a decision to apply [REDACTED] was taken by two physicians. At his discharge on 19 June 2013, Mr. [REDACTED] was placed under the outpatient "[REDACTED]" regime.

Other two intermittent periods of [REDACTED] followed from 5 October 2013 to 23 October 2013, and from 13 January 2014 to 4 March 2014. After each discharge, Mr. [REDACTED] continued [REDACTED].

██████████ "██████████" regime. Failure to attend the mandatory medical appointments and refusal to comply with the imposed regime could have resulted in a decision of transferring him to ██████████ ██████████.

On 19 August 2015, Mr. ██████████ was once more coercively admitted to the ██████████ and subjected to ██████████. During his confinement, Mr. ██████████ has been subjected to ██████████, placed in ██████████ and exposed to ██████████. Mr. ██████████ claims that all these measures generated ██████████ and ██████████, as well as ██████████. After his release on 13 October 2015, the outpatient "██████████" regime was re-imposed on him.

Mr. ██████████ alleges that the lack of any alternative support in the community had a dramatic negative impact on his quality of life, affecting his ██████████ and deteriorating his ██████████. He also claims that the constant exposure to ██████████ has affected his ██████████, and ██████████.

Mr. ██████████ appealed four times against the ██████████ requesting the end of the outpatient "██████████" regime to the Supervisory Commission (Kontrollkomisjonen), as per the procedure established by Act No. 62 of 2 July 1999. On 5 October 2013, he has lodged his first appeal, which was rejected on 15 October 2013. His second appeal lodged on 13 January 2014 was rejected on 21 January 2014, and a third one was rejected on 8 September 2015. A fourth appeal was lodged and again rejected on 13 April 2016. In response to Mr. ██████████'s allegations of discrimination on grounds of psychosocial disability, unlawful and arbitrary detention, exposure to ██████████, the Supervisory Commission argued that the "██████████" regime was imposed out of medical necessity, citing a psychiatric report stating that Mr. ██████████'s "condition was deteriorating" and that he lacked "██████████".

Dissatisfied with the decision of the Supervisory Commission, Mr. ██████████ referred his case to the Oslo District Court. In a decision of 2 July 2014, the Court rejected his claim and maintained the "██████████" regime. On 26 August 2014, Mr. ██████████ brought his case to the Borgating Court of Appeal, which maintained the decision of the Oslo District Court. Mr. ██████████ finally appealed to the Supreme Court, which rejected his claim on 2 February 2015.

In parallel, Mr. [REDACTED] had filed a complaint against the decision of [REDACTED] with the County Governor (Fylkesmannen), which was rejected on 15 April 2014. On 24 August 2015, Mr. [REDACTED] filed a second complaint with the County Governor, which was rejected on 26 August 2015.

Without prejudging the accuracy of these allegations, we are expressing grave concern at Mr. [REDACTED]'s confinement to a [REDACTED], in conformity with the provisions of the national Act No. 62 of 2 July 1999.

It is highly concerning that no adequate actions seems to have been taken by the appropriate national mechanisms to investigate Mr. [REDACTED]'s serious allegations of [REDACTED] of [REDACTED] and [REDACTED], including the use of [REDACTED], and the use of [REDACTED], which potentially may amount to cruel, inhuman or degrading treatment or torture.

In connection with the above alleged facts and concerns, we would like to remind your Excellency's Government of the applicable international human rights norms and standards relevant to this case, including the obligation to ensure that persons with disabilities exercise fully and effectively all their human rights and fundamental freedoms on an equal basis with others, notably in the enjoyment of the rights to liberty and security, equal recognition of legal capacity, access to justice, enjoyment of the highest attainable standards of physical and mental health and well-being, and freedom from torture and other cruel, inhuman or degrading treatment or punishment.

The above-mentioned facts appear to be in contravention of the right of persons with disabilities not to be arbitrarily deprived of their liberty and the right to equal recognition before the law as enshrined, inter alia, in articles 9 and 14 of the International Covenant on Civil and Political Rights, ratified by Norway on 13 September 1972, and the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified by Norway on 09 July 1986.

The Convention on the Rights of Persons with Disabilities, ratified by Norway on 03 June 2013, provides further guidance to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities. Article 14 in conjunction with article 5 of the Convention prohibits unlawful and/or arbitrary detention on grounds of disability, including forced confinement to psychiatric facilities. In addition, article 12 of the Convention guarantees the rights of persons with disabilities to make autonomous decisions and have those decisions respected. Respect for the legal capacity of persons with disabilities extends to the area of health and decision related to treatment (see CRPD/C/GC/1, para. 41). Accordingly, article 12 of the

International Covenant on Economic, Social and Cultural Rights, ratified by Norway on 13 September 1972, guarantees the right to health care on the basis of free and informed consent. In General Comment No. 14 on the right to the highest attainable standard of health the Committee on Economic, Social and Cultural Rights establishes that the normative content of article 12 includes the right of everyone, including persons with disabilities, to non-discrimination, including on matters related to the provision of consent. This position was further supported by the Committee on the Rights of Persons with Disabilities in their concluding observations to States, making explicit reference to the right of persons with disabilities to freely accept or refuse treatment and to be granted access to adequate decision making support when seeking to make informed health related choices.

The deprivation of liberty in psychiatric hospitals and the denial of legal capacity related to consent for treatment, as in the present case, is likely to also inflict severe mental pain or suffering on the individual, thus falling under the scope of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and article 15 of the Convention on the Rights of Persons with Disabilities. Similarly, the forced administration of drugs, including antipsychotic therapy, inside psychiatric hospitals or in the context of forced outpatient treatment, may constitute a form of torture or other cruel, inhuman or degrading treatment (see A/63/175, para. 63; CRPD/C/DOM/CO/1, para. 27). The same applies to the use of coercive measures including the use of electroconvulsive therapy (ECT), mechanical and chemical restraints, and the use of isolation and seclusion for persons with psychosocial disabilities (see A/HRC/22/53, para. 63; A/66/268, paras. 67-68, 78; CRPD/C/SRB/CO/1; CRPD/C/THA/CO/1).

These provisions impose an immediate obligation on the States to immediately discontinue these practices and reform laws and policies allowing for deprivation of liberty and forced treatment on the basis of disabilities by replacing these practices with services in the community that meet needs expressed by persons with disabilities and respect the autonomy, choices, dignity and privacy.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the above-mentioned rights of Mr. [REDACTED] in compliance with international instruments.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or any comment(s) you may have on the above-mentioned allegations.
2. Please provide information on the legal grounds for Mr. [REDACTED]'s confinement to a [REDACTED] and [REDACTED], as well as on the use of the [REDACTED] imposed on Mr. [REDACTED]. Please indicate how these provisions are compatible with international human rights norms and standards.
3. Please explain what measures have been taken to ensure that Mr. [REDACTED] has access to justice to review the lawfulness of his confinement to a [REDACTED] and to obtain appropriate redress and reparation for the abuses and violations of his rights.
4. Please provide information about the existence of national independent complaints and monitoring mechanisms, which are mandated to visit places where persons with disabilities are or might be deprived of their liberty, to prevent and to act on situations of human rights abuses and violations.
5. Please explain what community support services and treatment alternatives respectful of the rights, will and preferences of [REDACTED] have been made available to Mr. [REDACTED].
6. Please provide information regarding the legislative reform processes and other measures that have been taken to ensure that health care, including medical treatment, is always provided with the free and informed consent of the person with disabilities, and to avoid and prevent coercion in mental health services.
7. Please explain what decision making support is available to persons with disabilities that are seeking to make health related choices.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

We would like to inform your Excellency's Government that after having transmitted an urgent appeal to the Government, the Working Group on Arbitrary Detention may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such appeals — which are of a purely humanitarian nature — in no way prejudice any opinion the Working

Group may render. The Government is required to respond separately for the urgent appeal procedure and the regular procedure.

We seek your cooperation and openness to engage with the special procedures mandate holders which are joining this communication with the aim of assisting with the implementation of the international human rights norms and standards relevant to this case, including the obligation to ensure that persons with disabilities may exercise fully and effectively all their human rights and fundamental freedoms on an equal basis with others, notably as provided by the Convention on the Rights of Persons with Disabilities.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

José Antonio Guevara Bermúdez
Vice Chair of the Working Group on Arbitrary Detention

Catalina Devandas-Aguilar
Special Rapporteur on the rights of persons with disabilities

Dainius Pūras
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health