




Notkun nauðungar í Íslenskri geðheilbrigðisþjónustu

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Alþjóðalöggjöf sáttmálar/yfirlýsingar

Orðræða hinna fögru fyrirheita.....

“eina ástæðan, í siðuðu samfélagi, sem réttlætt getur valdbeitingu gegn einstaklingi er að slíkt komi í veg fyrir skaða annarra.”

Mill – um frelsi

- **Skaðalögmálið**

- Frelislögmálið, einstaklingar geta og mega gera hvað svo sem þeim sýnist svo lengi að það skaði ekki aðra
- Nauðung eins og to Mill túlkar hana er aðeins réttlætanleg ef hún kemur í veg fyrir að aðrir skaðist
- Hver ákveður og skilgreinir “skaða”?
- Hin huglæga **“get-out clause”** er grundvöllur nauðungar í lögum sem snúa að geðheilbrigðisþjónustu



Orðsifjafræði Alþjóðastofnana

- Mjúkt vald
 -athugum...
 -tökum til greina...
 -vekjum athygli...
 -er ljóst...
 -minnumst...
 -styðjum...
 -skorum á...
 - Tryggir réttindi fólks með geðraskanir upp að “get out” – skaðalögmálinu
 - Öll löggjöf og mat á henni, hvað snertir geðheilbrigðismál, er huglæg

International treaties/declarations/conventions

- Universal Declaration of Human Rights **(1948)**
- European Convention for the Protection of Human Rights and Fundamental Freedoms **(1950)**
- The International Covenant on Economic, Social and Cultural Rights **(1966)**
- The International Covenant on Civil and Political Rights **(1966)**

International treaties/declarations/conventions

- Principles for the protection of persons with mental illness and the improvement of mental health care (**1991 – MI Principles**)
 - UN High commissioner for HR
- **CoE** European Convention for the Prevention of Torture and inhuman or Degrading Treatment or Punishment (**1987**)
- **CoE** Recommendation 1235 (**1994**) on psychiatry and human rights
- **CoE** Recommendation no 10 (**2004**) concerning the protection of the human rights and dignity of persons with mental disorders

CoE - European Convention for the Protection of Human Rights and Fundamental Freedoms (1950)

- **Mental health legislation** in European States is **required** to provide for safeguards against involuntary hospitalization, based on three principles laid down by the European Court of Human Rights:
 - Mental disorder is established by **objective** medical expertise;
 - Mental disorder is of a **nature and degree** warranting compulsory confinement. (Wachenfeld, 1992).

• **Skaðalögmálið**

MI Principles - 1991

Principle 1: **Fundamental freedoms and basic rights**

1. All persons have **the right** to the best available mental health care, which shall be part of the health and social care system.
2. *All persons with a mental illness, or who are being treated as such persons, shall be treated **with humanity and respect** for the inherent dignity of the human person.*
3. All persons with a mental illness, or who are being treated as such persons, have the right to protection from economic, sexual and other forms of exploitation, physical or other abuse and **degrading treatment**.

MI Principles - 1991

Principle 9: Treatment

1. Every patient shall have the right to be treated in the least restrictive environment and with the least restrictive or intrusive treatment appropriate to the patient's health needs and the need to protect the physical safety of others.

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Skaðalögmálið

MI Principles - 1991

Principle 11: Consent to treatment

1. No treatment shall be given to a patient without his or her informed consent....except...
 - An independent authority, having in its possession all relevant information is satisfied that, at the relevant time, the patient lacks the capacity to give or withhold informed consent to the proposed plan of treatment or, if domestic legislation so provides, that, having regard to the patient's own safety or the safety of others, the patient unreasonably withholds such consent. Skaðalögmálið

MI Principles - 1991

Principles 16: Involuntary admission:

1. A person may be admitted involuntarily to a mental health facility as a patient if, and only if, a qualified mental health practitioner authorized by law for that purpose determines that that person has a mental illness and considers:

(a) That, because of that mental illness, there is a serious likelihood of immediate or imminent harm to that person or to other persons

• Skaðalögmálið

Council of Europe

- **Recommendation 1235 (1994)** on psychiatry and human rights

article 7 i.

- compulsory admission must be resorted to in **exceptional cases** only and must comply with the following criteria:
 - there is a **serious danger** to the patient or to other persons;
 - an additional criterion could be that of the patient's treatment: if the absence of placement could lead to a **deterioration or prevent the patient** from receiving appropriate treatment;

Skaðalögmálið

art. 7 iii c.

- **no mechanical restraint should be used**. The use of pharmaceutical means of restraint must be proportionate to the objective sought, and there must be no permanent infringement of individuals' rights to procreate;

Council of Europe

- **THE PROTECTION AND PROMOTION OF THE HUMAN RIGHTS OF PERSONS WITH MENTAL DISABILITIES (CoE-Commissioner of human rights – 2003 Seminar in CPH)**
 - **Every effort** should be made to secure the provision of psychiatric care on basis of the informed consent of the individual concerned. The Commissioner recognises, however, that the involuntary placement or treatment of persons with mental disabilities may prove necessary in exceptional circumstances.

• Skaðalög málið

WHO

- Countless resolutions/declarations/reports
- **The Helsinki declaration (2005)**
 - **Free and informed consent should form the basis of treatment and rehabilitation for most people with mental disorders. Involuntary admission and treatment should be the exception and should happen only in very specific circumstances. (autism-elderly)**

Legislation should outline these exceptional circumstances and lay down procedures to be followed for involuntary admission and treatment. Each case of involuntary admission and treatment should be regularly reviewed by an independent review body, and patients should also have the right to appeal to this review body against their involuntary treatment or detention.

• **Skaðalögmálið**

The UN Convention on the rights of persons with disability (2007)

Article 14 - Liberty and security of person

1. States Parties shall ensure that persons with **disabilities**, on an equal basis with others:
 - a) Enjoy the right to liberty and security of person;
 - b) Are not deprived of their liberty unlawfully or arbitrarily, and that any deprivation of liberty is in conformity with the law, and that **the existence of a disability shall in no case justify a deprivation of liberty.**

The UN Convention on the rights of persons with disability (2007)

- Article 12 & 25

article 12 recognizes equal right to enjoy legal capacity in all areas of life, **such as deciding where to live and whether to accept medical treatment**.

article 25 recognizes that medical care of persons with disabilities must be based on their **free and informed consent**.

Thus, in the case of earlier non-binding standards, such as MI principles the Special Rapporteur (Novack) noted that **the acceptance of involuntary treatment and involuntary confinement runs counter to the provisions of the Convention**

Allur þorri fólks **100%**

Fólk með geðheilbrigðisvandamál ~ **22-25%**

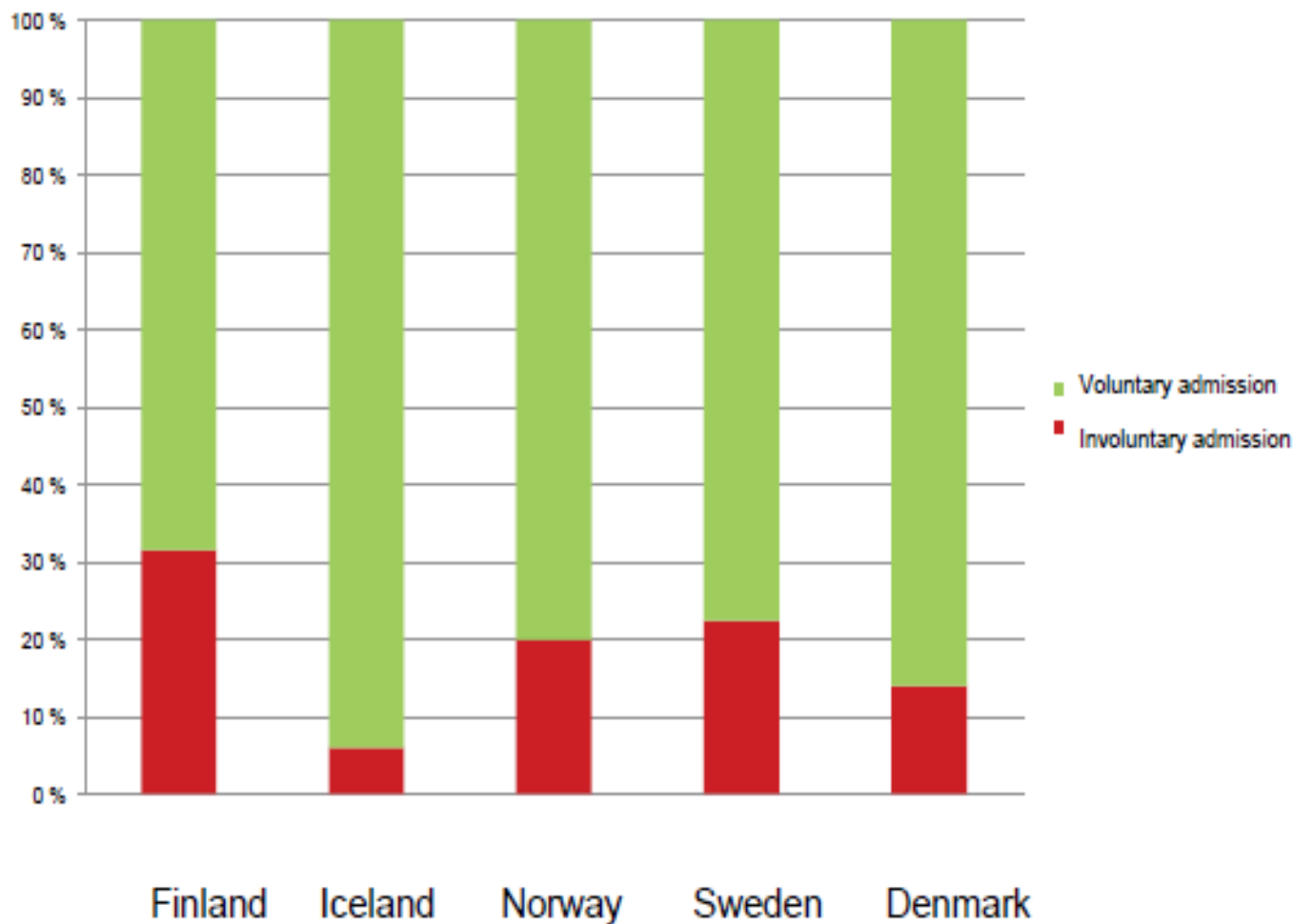
Geðfatlaðir
2.5%



ICELAND

**The country with no specific mh
act or specific legislation – and no
use of mechanical constrains**

Admissions under coercion in the Nordic countries



Source: THL

Picture 6. Rates of admission under coercion in the Nordic countries.

Lögræðislögin

- **19. gr. 1.** Sjálfráða maður verður ekki vistaður nauðugur í sjúkrahúsi.
2. Þó getur læknir ákveðið að sjálfráða maður skuli færður og vistaður nauðugur í sjúkrahúsi ef hann er haldinn alvarlegum geðsjúkdómi eða verulegar líkur eru taldar á að svo sé eða ástand hans er þannig að jafna megi til alvarlegs geðsjúkdóms. Sama gildir ef maður á við alvarlega áfengisfíkn að stríða eða ofnautn ávana- og fíkniefna. Ákvæði 18. gr. stjórnarsýslulaga gilda ekki við meðferð mála samkvæmt þessari málsgrein. Ef vakthafandi sjúkrahúslæknir ákveður nauðungarvistun manns samkvæmt þessari málsgrein skal bera ákvörðun hans undir yfirlækni svo fljótt sem verða má. Frelsisskerðing samkvæmt þessari málsgrein má ekki standa lengur en 48 klukkustundir nema til komi samþykki dómsmálaráðuneytisins skv. 3. mgr.
3. Með samþykki dómsmálaráðuneytisins má vista sjálfráða mann gegn vilja sínum í sjúkrahúsi til meðferðar í allt að 21 sólarhring frá dagsetningu samþykkis ráðuneytisins ef fyrir hendi eru ástæður þær sem greinir í 2. mgr. og nauðungarvistun er óhjákvæmileg að mati læknis.

Skaðalög málið

Lögræðislögin

- 23. gr. – trúnaðarlæknir innanríkisráðuneytis – umsögn
- 25. gr. Skyldur
- 27. gr. Ráðgjafi nauðungarvistaðs manns
- 28.gr. 2. Maður, sem nauðungarvistaður er til meðferðar í sjúkrahúsi með samþykki dómsmálaráðuneytis, **skal einungis sæta þvingaðri lyfjagjöf samkvæmt ákvörðun yfirlæknis.** Sama á við um aðra þvingaða meðferð.
3. Vakthafandi læknir getur þó tekið ákvörðun um að nauðungarvistaður maður skuli sæta þvingaðri lyfjagjöf eða annarri þvingaðri meðferð **ef hann er sjálfum sér eða öðrum hættulegur** eða ef lífi hans eða heilsu er annars stefnt í voða.

Skaðalögmálið

Hvað segja notendur
þjónustunnar?



Declaration of Dresden (2007)

ENUSP/WNUSP/Mindfreedom/BPE

“We stand united in calling for an end to all forced and coerced psychiatric procedures and for the development of alternatives to psychiatry”

Takk

