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Putting People Behind Closed Doors: An Analysis of Social Care Detention in Slovenia[1]

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This article examines the complex landscape of social care detention in Slovenia, exploring both the normative framework and practical applications within the system. The study integrates a thorough legal analysis with comprehensive qualitative research, drawing on interviews and discussions with key stakeholders involved in the social care detention process. We scrutinise the balance between human rights safeguards and the operational challenges of the law, the influence of psychiatric expertise over legal proceedings, and the societal attitudes towards deinstitutionalisation. The findings reveal a significant discrepancy between theoretical intentions and practical enforcement, highlighting an over-reliance on psychiatric assessments that might sideline comprehensive legal oversight. Moreover, despite legislative mandates that position social care detention as a measure of last resort, a stark lack of viable alternatives persists, complicating efforts towards deinstitutionalisation. This paper underscores the need for further research, particularly within the Slovenian context, where literature is sparse, to better understand and reform practices surrounding the detention of some of society's most vulnerable individuals. Through a multidisciplinary approach, this research contributes to reevaluating the systems in place, advocating for enhanced legal and procedural reforms that align more closely with human rights standards.

Keywords: social care detention, social welfare institutions, human rights, process, institutionalisation, Slovenia

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1 Introduction

Criminology traditionally focuses on individuals whose liberties are curtailed as a consequence of committing criminal offences. This involves an analysis of post-conviction penalties, such as imprisonment or probation, which are imposed under criminal justice systems. However, placing individuals in detention within social welfare institutions represents a parallel yet distinctly different scenario where similar liberty deprivations occur outside the conventional criminal process.[5] These placements hinge on health and safety considerations rather than punitive measures against criminal acts, thereby introducing unique challenges and ethical questions. Despite the differences in underlying justifications – whether for public safety in criminal justice or health and safety in social welfare – the ultimate outcome remains profoundly similar: individuals find their liberty curtailed and are subjected to restrictions that represent the most severe forms of personal freedom limitations encountered in society.

Our study expands the criminological exploration into these non-criminal yet liberty-restricting environments, which necessitate a nuanced understanding of legal thresholds, procedural justice and the implications for human rights. In this paper, we start with a review of relevant literature, focusing on the concept of institutionalisation. Next, the methodology section details the research design and data collection methods employed to gather empirical evidence. In the empirical part, the article is divided into two main analyses: the Law in Books, which examines the legislative framework and international standards as they are intended to function, and the Law in Action, which assesses how these laws are ap-

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[5] We have decided to use the term "social care detention" following the example of Series (2022). However, other authors may use different terminology, such as involuntary detention, civil commitment, or secure unit placement. We feel that the term we use best incorporates the dimensions we wish to explore and reaffirms the wider criminological scope of the article.

plied in practice in Slovenia, highlighting practical challenges and stakeholder roles. We conclude by discussing the significance of social care detention and its role in modern society.

2 The In-Between: Punishment Without a Crime

Social care detention straddles a delicate balance between care and control, a domain typically reserved for those found guilty of crimes. However, the individuals discussed in this study have not committed crimes; rather, they are confined based on a professional assessment of risk that suggests a potential for harm so significant that it justifies one of the state's most severe interventions: the restriction of liberty (Richardson, 2003).

This area has not been extensively explored or theorised within legal or critical disability studies, possibly stemming from the traditionally low regard for social care or the historical perception that social care operates 'outside the law' (Series, 2022). Moreover, social care detention operates in a specific regulatory framework that provides safeguards for individual liberty, layered over a reality that includes institutional restrictions, supervision and sometimes coercive measures in post-carceral community care settings. This form of detention is more deeply intertwined with the methodologies, administrative structures and staff of social care compared to mental health detention, which is primarily hospital-based and led by the field of psychiatry (Kadile, 2023; Twigg, 2000). Mental health detention typically involves confining individuals who are diagnosed with psychiatric disorders and deemed a danger to themselves or others, under specific legal criteria. This form of detention is primarily executed within hospital settings and managed under psychiatric guidelines. Unlike mental health detention, social care detention predominantly affects older adults, people with intellectual disabilities, and those with neurological or brain-related conditions (Johnson & Tait, 2003; Series, 2022). This type of detention is less about managing psychiatric crises and more about providing long-term care and supervision in facilities designed to handle the complex needs of these populations.

Typically, restricting an individual's liberty is a response to criminal actions. In contrast, social care detention involves pre-emptive measures based not on past crimes but on assessed risks (Alfandari et al., 2022). These assessments are made by professionals who determine the necessity for severe state intervention. In this context, the concept of care as violence becomes particularly relevant, as the protective measures can inadvertently lead to violations of personal dignity and autonomy. Care practices may, in fact, sometimes translate into acts of control, coercion and violence (Series, 2022; Szmukler, 2015; Zaviršek, 2018).

Goffman's (1961) analysis of total institutions frames the discussion on how social care detention (and other examples of total institutions) functions as an environment that profoundly shapes individuals' lives. In this paper, we are particularly interested in how the procedures preceding detention are shaped and how they take place. Goffman emphasises how the procedure of placing individuals in asylums or similar institutions often involves a bureaucratic process that includes medical, legal and administrative assessments, leading to a decision that separates individuals from the outside world. This admission process advances the institution's goals by assimilating the individuals into an environment where they are surveilled and controlled, stripping them of their agency and autonomy. Moreover, Goffman suggests that the existence and functions of such institutions reflect and reinforce certain societal attitudes towards those who are different or seen as incapable of self-management. These institutions help maintain social order by segregating those who deviate from societal norms, thereby enforcing conformity and limiting the visibility of deviance. Therefore, these institutions bear consequences at different levels: micro-level effects on individual lives and the macro-level implications for how society organises and manages those deemed in need of such care (Goffman, 1961).

Following Goffman, research has further explored the evolution of institutionalisation, examining different aspects of the notion, be it its relationship to power and control (Foucault, 1991), the institutionalisation of the poor (Wacquant, 2009), or the social control mechanisms of psychiatric institutions and their role in reinforcing societal norms and exclusion (Scull, 2016). However, focusing on non-medicalised, non-punitive institutionalisation has been much less present in academic literature (Series, 2022).

Nevertheless, an important new aspect of the academic discussion on institutionalisation has become its opposite – deinstitutionalisation or, rather, alternative modes of care. The shift towards deinstitutionalisation and community-based care models reflects a growing consensus on the need for alternatives that respect individual rights and support social inclusion (Szmukler, 2020). Scholars and practitioners – as well as legal instruments (Legemaate, 2003) – advocate for supported living arrangements and person-centred planning as viable alternatives to traditional institutional care, emphasising the benefits of treating individuals in less restrictive, more inclusive settings (Gooding, 2021; Gooding et al., 2018).

Furthermore, in this paper, we focus on the process of deciding whether to place an individual in social-care detention (Smyth et al., 2017). This involves a complex array of professional inputs: legal professionals, though crucial to the decision-making process, often lack the specialised knowledge

necessary for navigating the challenges presented by these cases. The role of attorneys is frequently ambiguous, straddling the need to advocate for their clients while grappling with the specialised legal and ethical considerations these cases require (Dawson, 2003; Freckelton, 2003). Psychiatry's traditional approach to patients considered for social care detention has also been scrutinised; historical practices have sometimes prioritised institutional convenience over patient-centred care, necessitating a reevaluation of psychiatric roles and responsibilities in such assessments (Laureano et al., 2024; Sashidharan et al., 2019). Like much of the decision-making in criminal justice, psychiatric decision-making has become increasingly crisis-driven, emphasising the notions of dangerousness and risk (Vine, 2003).

Finally, the role and capacity of the person placed in social-care detention and their families or close ones need to be considered more thoroughly (Akther et al., 2019; Lynch et al., 2022; Talukdar, 2021).

3 Methods

We have approached our broad research question of how social care detention's normative and practical aspects function in Slovenia through a mixed-method approach, combining legal document analysis with qualitative insights drawn from interviews and focus group discussions with various stakeholders. We chose this approach to provide a comprehensive understanding of social care detention procedures and evaluate the broader legal framework governing these placements.

The first stage of the research involved an in-depth analysis of international and national legal instruments relevant to regulating social care detention. We examined treaties, such as the European Convention on Human Rights (ECHR) and the Convention on the Rights of Persons with Disabilities (CRPD), alongside national legislation, particularly the Slovenian Mental Health Act (Council of Europe, 1950; United Nations, 2006; »Zakon o duševnem zdravju (ZDZdr)«, 2008). Additionally, this analysis incorporated guidelines and recommendations from the Committee on the Rights of Persons with Disabilities regarding interpreting key CRPD articles (United Nations Committee on the Rights of Persons with Disabilities, 2014, 2015, 2017). These guidelines provided important interpretive frameworks to assess whether Slovenian practices align with international human rights obligations. This legal analysis aimed to contextualise the Slovenian framework within the broader international human rights paradigm, focusing on the codification of legal procedures for institutional placements and assessing their compliance with fundamental rights principles. Additionally, this research phase scrutinised the legal basis, procedures and overall legitimacy of such placements in the Slovenian context.

The second stage involved qualitative interviews and focus groups conducted with key stakeholders, including two supreme court judges, one high court judge, two first instance judges, one attorney, one psychiatric expert and representatives of the Ombudsman. These participants were directly involved in or have experience with cases concerning social care detention. The interviews were semi-structured, allowing for flexibility in exploring the participants' views on the procedural and substantive aspects of the Slovenian Mental Health Act (»ZDZdr«, 2008) and its application in practice. Broader issues, such as systemic challenges, gaps in the legal framework and practical considerations not strictly bound to legal doctrines, were also discussed to gather a holistic perspective on the challenges faced in this area.

Participants were informed of the confidentiality of their contributions, and all identifying information was anonymised. Informed consent was obtained, ensuring adherence to ethical standards, particularly concerning handling sensitive legal and psychiatric data.

The interviews were transcribed verbatim and analysed using thematic analysis, following Braun and Clarke's (2021) approach. This method enabled a systematic coding process to identify and interpret key themes that emerged from the data. The thematic analysis focused on the participants' perceptions of the law concerning social care detention and the challenges they face in practice. Through this approach, we were able to uncover deeper insights into how the stakeholders perceive the limitations of the current legal procedures and how these impact their roles in practice.

We chose a qualitative approach to capture the subjective experiences and nuanced perspectives of the legal and psychiatric professionals involved in secure unit placements. This methodology allowed us to explore their emotional responses and cognitive reflections on the legal procedures and the broader systemic challenges they encounter.

4 Law in Books: The Normative Framework of Social Care Detention

To understand social-care detention in the Slovenian context, it is crucial to consider the influence of international legal standards such as the CRPD (United Nations, 2006) and the ECHR (Council of Europe, 1950). These conventions, ratified by Slovenia, should provide benchmarks and frameworks that

guide national legislation and policies, ensuring they meet established human rights protections.

4.1 The Convention on the Rights of Persons with Disabilities

The CRPD (United Nations, 2006) is the foundation of human rights standards for persons with disabilities. Slovenia is bound by its provisions and is under the supervision of the Committee on the Rights of Persons with Disabilities (the Committee), which plays a key role in the interpretation and implementation of the CRPD (United Nations, 2006). Article 1 of the CRPD defines its core mission: to promote, protect and ensure the full and equal enjoyment by persons with disabilities of all human rights and fundamental freedoms, while promoting respect for their inherent dignity. Key to our analysis are the core principles of the CRPD, outlined in Article 3. These principles, which emphasise respect for inherent dignity, personal autonomy (including the freedom to make one's own choices), independence, non-discrimination and full and effective participation in society, fundamentally shape the CRPD's stance on the treatment and accommodation of persons with disabilities. Moreover, Articles 12, 14 and 19 specifically address issues related to institutionalisation. Article 12 emphasises equal recognition before the law, which ensures that persons with disabilities have the same legal capacity as others. Article 14 emphasises the right to liberty and security, arguing that the existence of a disability does not justify deprivation of liberty. Finally, Article 19 promotes the right of persons with disabilities to live independently and to be included in the community, and advocates for community-based services and support. These articles are further fleshed out in the Committee's general comments and guidelines, which contain detailed explanations and recommendations for effectively implementing the CRPD's principles. The Committee has provided key guidance for the interpretation of Articles 12, 14 and 19 through its General Comment No. 1 (United Nations Committee on the Rights of Persons with Disabilities, 2014), its Guidance on Article 14 (United Nations Committee on the Rights of Persons with Disabilities, 2015) and its General Comment No. 5 (United Nations Committee on the Rights of Persons with Disabilities, 2017). Taken together, these documents emphasise that these Articles should not be considered in isolation but rather as interconnected provisions central to the CRPD's non-discrimination and overall objectives.

The Committee clarifies that Article 14 does not allow exceptions enabling detention on the grounds of disability. The Committee condemns any form of deprivation of liberty based on actual or perceived disability as discriminatory and arbitrary, in violation of Articles 12 and 14. This includes the detention of persons with disabilities based on perceived danger to themselves or others, alleged need for care, or other impairment-related reasons. Such practices are deemed contrary to the right to liberty and constitute arbitrary detention. The Committee stresses that individuals with disabilities, like those without disabilities, should not be presumed dangerous, and issues related to risk should be managed through the existing legal frameworks for addressing criminal behaviour and related legal matters. The Committee further criticises mental health laws for failing to adequately protect human rights, noting that they often create a separate, less protected system for individuals with disabilities. It asserts that the freedom to make personal choices, including the right to risk and to make mistakes, should also apply to people with disabilities, as stated in Article 3. Article 19 is crucial for addressing the concerns raised in Articles 12 and 14, mandating reform of systems that violate these rights and preventing future violations. The Committee rejects institutionalisation as necessary, particularly on grounds of cost or assumptions about the abilities of people with disabilities, and advises against building/expansion of institutions. It also opposes "satellite" arrangements that mimic community living but remain institutionally linked. Instead, the Committee advocates for a deinstitutionalisation strategy focused on structural reforms, improved community accessibility and public awareness to promote integration and independent living. The CRPD (United Nations, 2006) thus strongly and categorically opposes the forced institutionalisation of people with mental disabilities in social care institutions.

4.2 … against the European Convention on Human Rights

In contrast, the approach of the Council of Europe, reflected in the ECHR (Council of Europe, 1950), is more complex and has evolved over time. At the heart of this issue is Article 5 of the ECHR, which emphasises the fundamental right to liberty and security of the person. This provision allows for deprivation of liberty only in specific circumstances and requires that such measures follow a legal procedure. Notably, Article 5(1)(e) explicitly allows for the detention of persons with mental disorders, thus providing a legal basis for their forced institutionalisation. The European Court of Human Rights (ECtHR), which interprets and applies the ECHR, has upheld this provision, although it has also laid down certain conditions that must be met to justify such deprivation of liberty. The ECtHR's adherence to this framework is understandable, as any significant departure from it would undermine the normative structure of the ECHR. Thus, legally speaking, the Council of Europe's position on forced institutionalisation is clear and in direct contradiction with the principles of the CRPD (United Nations, 2006) described above.

Despite this legal clarity, the Council of Europe has taken some steps to reconsider its position on forced institutionalisation. Policy instruments such as Recommendation REC(2004)10 (Council of Europe, 2004), Recommendation 2158 (Parliamentary Assembly of the Council of Europe, 2019a), and Resolution 2291 (Parliamentary Assembly of the Council of Europe, 2019b) signal a change in perspective. In particular, the latter calls on Member States to eliminate coercion in mental health settings and to respect the human rights principles enshrined in the CRPD (United Nations, 2006). This represents an important paradigm shift in the Council of Europe, moving from a position that allowed exceptions for forced institutionalisation to one that advocates for its total prohibition.

Still, Slovenia, as a signatory to both the ECHR and the CRPD, is in a particularly delicate position, as it has to harmonise its national legislation in light of these conflicting international obligations. This conflict poses major challenges for Slovenian legislators, particularly in enacting legislation that complies with the strict human rights standards of the CRPD without clashing with the ECHR. The ECtHR, recognised as the highest human rights judicial body in the Council of Europe, could invalidate Slovenian legislation that is compatible with the CRPD but contravenes the ECHR's provisions on coercive institutionalisation. This is not a tension that Slovenia can resolve on its own but rather one that requires coordinated action and resolution at the international level between the two organisations. In the meantime, Slovenia – and others – are forced to navigate between these opposing regimes, as they are legally bound to respect both despite their inherent contradictions.

4.3 The National Level

The institutionalisation of individuals with mental disorders, whether through voluntary or involuntary admission, is regulated by the Mental Health Act (»ZDZdr«, 2008), which was initially introduced to align with the standards set by the CRPD (United Nations, 2006). Our normative analysis focuses specifically on forced institutionalisation within social care units, therefore examining the legal framework for involuntary admission based on a court order outlined in Article 75 of the »ZDZdr« (2008).[6]

The criteria for admission to a secure unit within a social welfare institution are detailed in Article 74 of the »ZDZdr« (2008). These conditions must all be met and include the following: 1) Acute hospital treatment has been completed or is not required; 2) The individual requires ongoing care and protection that cannot be provided in the home environment or by other means; 3) The individual poses a risk to their own life or the lives of others, significantly endangers their own health or that of others, or causes serious property damage; 4) The threat posed is directly related to a mental disorder that severely impairs the individual's ability to assess reality and control their behaviour; 5) The risks identified cannot be mitigated through alternative forms of assistance outside of a social welfare institution; 6) The individual meets other relevant admission criteria as established by social welfare regulations.

When comparing social care detention to mental health detention under the »ZDZdr« (2008), the conditions are largely similar. A key distinction is that social care detention requires acute hospital treatment to be either completed or deemed unnecessary. Acute hospital treatment is defined as care for an acute or significantly exacerbated mental disorder, with mental health professionals determining its necessity. The law prioritises mental health detention, as hospital treatment is central to the intervention. If treatment is unnecessary or not possible, social care detention may be more appropriate, though the legal proceedings remain similar with necessary adjustments (*mutatis mutandis*).

The procedure is initiated by a formal request from authorised petitioners, including mental health treatment providers, social welfare institutions, social work centres, supervised treatment coordinators, close family members, or the public prosecutor's office. The application must include an opinion from the social welfare institution on the eligibility for admission – unless the institution itself initiated the procedure – as well as an opinion from the individual's personal physician or psychiatrist, provided the examination was possible. This medical opinion must be no older than seven days. A statement explaining this must be included if an examination cannot be conducted.

Upon receiving the application, the court must inform the individual within one day of his/her right to reply and to choose a legal guardian. If the individual does not appoint an attorney, the court will assign one *ex officio*. Legal counsel is considered essential to safeguard the individual's dignity and rights in these cases.

The court also orders an evaluation by a psychiatric expert, who must provide an opinion on the individual's health within three days, including an assessment of whether supervised treatment is a viable option. The expert may conduct the examination against the individual's will if necessary.

[6] The regulation of involuntary admission based on a court order is supplemented, *mutatis mutandis*, by the provisions for voluntary admission to a social welfare institution and for admission for treatment in a special ward of a psychiatric hospital without consent.

After obtaining the expert's opinion, the court holds a hearing, inviting the applicant, the individual, their attorney, legal guardian, close relatives and any other relevant persons. The court decides based on direct interaction with the individual, including an interview if the individual's health allows. If they are too ill to attend the hearing, they may be interviewed where they reside. All parties involved have the right to ask questions and access the court file, although the court may limit access for the individual if necessary to protect their health or ensure the confidentiality and safety of others. If the court finds that the conditions for supervised treatment are met, it will follow the legal provisions for imposing such measure.

Before deciding, the judge must obtain the social welfare institution's opinion on its capacity to admit the individual, although this opinion does not bind the judge. The judge must also consider the individual's preferences, personal circumstances, characteristics and suggestions from close relatives when deciding on the institution.

The court order must provide detailed reasons for each condition specified in Article 74 and the duration of the detention, which cannot exceed one year. The individual and other relevant parties have the right to file a non-suspensive appeal within three days of receiving the decision.

The »ZDZdr« (2008) also outlines the role of a special representative whom individuals can appoint during procedures involving treatment in secure or supervised units. This representative advocates for the individuals' mental health rights as detailed in Articles 23 to 28 of the »ZDZdr« (2008) and upholds their specific right to a personal representative. Key responsibilities outlined in Article 12 include informing individuals about their rights (movement, visitors, and communication), guiding them on how to exercise these rights, ensuring awareness of their rights during detention, advocating for their protection and privacy, monitoring records of any restrictions or special treatments, and recommending oversight to ensure compliance with the »ZDZdr« (2008).

If, during the individual's stay, the director of the social welfare institution determines that continued detention in a secure unit is necessary to prevent the dangers outlined in Article 74 of the »ZDZdr« (2008), they must propose an extension of the detention at least 14 days before the current order expires. The court is then required to follow the same procedures, including obtaining a recent opinion from the individual's personal physician or psychiatrist, albeit with some flexibility due to the individual's ongoing monitoring within the institution. Each extension of detention can last for a maximum of one year.

5 Law in Action: The Conceptual and Practical Challenges of Social Care Detention

This section outlines our qualitative research findings from discussions with stakeholders involved in social care detention. Initially, we explore their perspectives on the normative framework that governs their operations, focusing on the adequacy of human rights safeguards, the clarity of the legal system, and the criteria guiding their decision-making processes. We then examine the roles of various stakeholders within the detention process, highlighting the dynamics of their interactions and the tensions and synergies that arise in practice.

5.1 Perspectives on the Normative Framework

Generally, stakeholders agreed that the Mental Health Act constitutes a robust codification of the law, offering a strong foundational framework that accommodates necessary adjustments and developments over time.

They acknowledged the normative text's interpretative breadth, viewing it not as a problem but as a feature that allows for tailored application in individual cases.

> "At the normative level /.../, the procedure is somewhat broad, lacking in detailed provisions. However, this flexibility is beneficial, it ensures that the best interests of individuals are prioritised and that they receive thorough legal protection /.../." (Judge 1)

Similarly, they noted the law's inherent inability to capture all the pertinent details critical in practical applications:

> "/.../ you can't put it on paper, because then there is no room for manoeuvre, /.../ to adapt, then we are letter-readers. That's no good." (Judge 4)

Other stakeholders generally agreed with the judges' position and found that the law provides a solid foundation while allowing room for necessary modifications and developments over time. Other stakeholders generally concurred with the judges' view that the law provides a robust foundation while allowing for necessary modifications over time. However, several more specific issues highlighted contradictions in this perspective. Below, we outline the most critical issues identified. These include discrepancies between normative ideals and practical realities, such as time limits that are theoretically beneficial but burdensome in practice. Other issues arise from procedural failures, such as inadequate record-keeping, and some stem from potentially vague or imprecise legal definitions, such as the criteria for engagement. These contradictions illustrate the gap between the law's intentions and its application.

5.1.1 Urgency & Time Constraints

With regard to the normative framework, a key feature that emerged in our discussions was the challenges related to the time limits imposed by the Mental Health Act for making decisions and completing procedural actions. The procedure for admitting an individual to social care detention without their consent is considered an urgent or priority matter pursuant to Article 83(2)(2) of the Courts' Act (»Zakon o sodiščih (ZS)«, 2007). This urgency stems from the serious nature of the decision, which involves determining whether a person with a mental disorder poses a significant risk to themselves or others, requiring their placement in a secure facility. Consequently, the procedural time limits for such cases are exceptionally brief, and the court is obligated to render a decision as swiftly as possible to ensure the safety of the individual and those around them.

Effect on judges. The stakeholders, especially judges, acknowledged the urgency and understood the necessity for the strict timelines.

> "It can be exhausting to manage a high volume of cases /.../ especially when faced with tight deadlines /.../ such as having to write fifteen decisions in just three days /.../. Nonetheless, I understand the rationale behind the emphasis on speed /.../. There is a purpose to this urgency, as it facilitates timely resolutions." (Judge 2)
> "This is an emergency procedure, it's about time and decision being weighed up, and if you want to make an essentially quick decision, you have to say at some point that you have enough information to make that decision, and you also have to decide what's in the best interest of the person /.../ a quick decision with limited information, or getting all the information of material truth, and essentially keeping the person restrained for that time. The person is restrained, this has to be [considered]." (Judge 3)

As is evident from the quotes above, this short window of time, nevertheless, presents a significant challenge for the professionals involved in the decision-making process, who highlighted the pressure these time constraints place on the judiciary, potentially leading to hasty decisions.

> "When handling these procedures /.../, you're constantly under time pressure and the burden of dealing with numerous cases /.../ all while knowing that the decisions you're making are far from trivial." (Judge 3)

Moreover, the required swiftness may have a significant downside:

> "I think /…/ the problem is that you don't get information about the relatives, you don't get contact /.../ so it's very difficult /.../. But you have a three-day deadline /.../ and this information is very important /.../. That is, how the person is functioning at home, what is going on /.../." (Judge 2)

> "How can a judge truly understand a person's situation if the time constraints prevent them from obtaining comprehensive information?" (Judge 1)

Effect on psychiatric experts. Similarly, the strict time constraints impact other participants in the process, particularly psychiatric experts. The interviewees noted that these constraints significantly limit the expert's ability to evaluate the individual thoroughly. Typically, experts are only able to review the person's file, conduct a brief examination, and possibly consult with the treating physician. Given these limitations, concerns have been expressed about whether experts can adequately familiarise themselves with the individual and deliver a well-informed opinion within the allotted time.

> "Usually, it's just a brief and somewhat routine procedure when I visit the individual in the hospital." (Psychiatric expert)
> "/.../ can an expert really deliver a thorough and high-quality opinion within such a short timeframe? Can they gather the necessary information in depth?" (Judge 1)

Moreover, some interviewees highlighted that the rapid decision-making required in social care detention cases is a specialised type of psychiatric work that not all psychiatrists are accustomed to or suited for. The necessity to make quick decisions with limited information means that only those who can effectively manage these constraints are suitable for such roles. This challenge is compounded by the small size of Slovenia's legal and psychiatric communities. Our interlocutors reported a shortage of qualified experts available to provide timely evaluations. This scarcity of experts results in delays in proceedings and reduces their efficiency, creating bottlenecks that slow down the entire judicial process.

> "What frustrates me the most is the lack of experts. It's overwhelming /.../it's just not right. If we had more experts, we could organise better, which would make the process much smoother /.../. While it wouldn't solve the issue of accommodation, at least we could manage the initial stages more effectively /.../. But as it stands /.../it's impossible to consult with an expert every day because there simply aren't enough of them /.../ and those available can't afford to dedicate all their time to just one case /.../. More experts would alleviate a lot of the problems we face." (Judge 3)

Effect on attorneys. Strict timeframes also impact other participants: our interviewees further emphasised the limitations it poses on attorneys in these cases. Concerns were raised about whether attorneys, typically appointed *ex officio* and therefore previously unfamiliar with the individual and their case, have sufficient time to understand the situation and provide adequate and high-quality counsel thoroughly.

> "The deadlines are very short /.../ we're not allowed more than 24 to 48 hours /.../. We have to work quickly /.../ and the interview is

> conducted in a rush. /.../ if possible, though often it isn't, I try to meet with the client beforehand." (Attorney)

This reflection highlights the significant challenge that time pressures pose for attorneys in these proceedings and raises parallel questions about their capacity to provide thorough and effective representation in these conditions. Some stakeholders expressed a concern that while normatively necessary and welcome, in practice, the role of the attorneys is significantly diminished by these constraints.

5.1.2 Lack of Transparency

Interviewees, particularly judges, highlighted significant record-keeping gaps regarding social care detention. They reported an absence of centralised or accessible information on space availability, the number and locations of secure units, or their current occupancy. Furthermore, there is a notable lack of detailed information on the conditions and criteria for admission, including reasons for a person's placement, the circumstances surrounding their admission, their relationships with relatives, their behaviour in various settings, and the specific risks they pose to themselves or others.

This deficiency in record-keeping severely impedes the courts' ability to make well-informed decisions and efficiently locate suitable institutions for placement. Judges stressed that a regulated and comprehensive record system would markedly improve the efficiency of the decision-making process. With readily available information, the court could more effectively focus on addressing the individual's needs rather than spending excessive time locating appropriate institutions. Additionally, having detailed records would facilitate quicker decision-making by providing a clearer view of all available options, including potential alternatives to secure unit placement.

5.1.3 Serious Endangerment

One of the key conditions for placing a person in social-care detention is the standard of endangering oneself or others. During the interviews, the question was raised whether this standard (can) be met in concrete procedures.

Trying to make sense of this legal standard, one of the judges resorted to a comparison with the criminal justice system:

> "In criminal justice this danger has already been realised, whereas here it has not, because if it had, criminal justice would have had to deal with it, so it is somehow already inherent in civil cases that this danger has not yet been realised in such a clear, direct and concrete form /.../ [However] it must have already manifested itself in some way, some excesses must have already occurred, but these excesses do not yet have the characteristics of a crime /.../." (Judge 5)

A different judge tried to explain it through examples of grave endangerment:

> "/…/ sudden outbursts of aggressive behaviour against oneself or others, inability to control impulses /.../ I have not yet written a decision where detention was given for damaging someone's property, but there were neglect of the environment, unawareness of physical illnesses, inability /.../ to make basic treatment decisions /.../." (Judge 3)

When probed further on how they can distinguish between cases of grave endangerment and less severe situations, the judge explained that the evidence must be clearly demonstrated for her to rule on it. She emphasised her role in protecting individual rights, noting that initiating proceedings is not her prerogative but depends on the information provided by the applicant. Typically, she relies on reports from the social work centre, expert opinions and access to documentation.

However, others were more critical of the standard's application in practice. One judge specifically noted a declining trend in interpreting the standard in recent years.

> "Then the psychiatrist comes in and makes a diagnosis, and the rule is that the psychiatrist tells you in one sentence everything you need to have: /.../ "[the individual] is violent, hetero-aggressive, or something like that". /…/ But [we] have quite forgotten that it has to be concrete. There is nothing inside /.../ you have no danger at all, except that this man has a diagnosis, and that he has been to the hospital twice, and that he is now confused /.../." (Judge 1)

Other interviewees agreed with the requirement for a specific incident but were less concerned about how the assessment is conducted in practice.

> "There has to be one event, it has to be specific: what the person has done recently to endanger himself or others. /…/ In the High Court, they said exactly 'this and this' is what the actual situation must be /…/ as this is really an extreme, extreme measure." (Attorney)

It is apparent, however, that there are unresolved (and potentially unresolvable) tensions within the definition, as appeals to the Supreme Court do occur and do get overturned.

> "We have overturned a couple of decisions when it was really a case of unproven danger, that is to say, there was some weirdness /.../." (Judge 2)

5.2 Stakeholder Roles

In this sub-theme, we explore the roles and impacts of various stakeholders, including judges, attorneys, psychiatric experts and social workers, in the process of placing an individual in social care detention. We look at their contributions to decision-making and how their interactions influence the outcomes of these cases.

5.2.1 Judges

Reflecting on the critical role of judges in social care detention cases, discussions revealed a complex landscape of professional and ethical challenges. Judges find themselves navigating between the stringent demands of legal frameworks and the nuanced realities of individual cases, each requiring a delicate balance of justice and empathy.

The role of judges in social care detention cases intertwines legal precision with profound ethical considerations. Judges must navigate the delicate balance of enforcing the law while safeguarding the rights and well-being of individuals who are often in vulnerable states.

As hinted above, some of the judges expressed concerns over the erosion of procedural standards, noting a decline in the adherence to these safeguards and questioning the adequacy of human rights protections in these cases.

> "I dare say this is a clear abuse of the law and if we were to compare ourselves with the EU, /.../ we might realise that our judicial thinking is often quite un-European in terms of human rights protection." (Judge 1)

Moreover, judges face the challenge of deciphering complex cases amidst input from various stakeholders. Some have, for example, criticised how attorneys often take a passive role in proceedings, failing to actively advocate or challenge evidence, which could impact the outcomes significantly. Similarly, the involvement of psychiatric experts is also a point of contention. Judges have criticised these professionals for their superficial engagement and hasty assessments, which may not provide a thorough understanding of the individual's condition. The inactivity of both stakeholders significantly exacerbates the challenges judges face in deciding in these cases.

An additional systemic burden judges face is the overwhelming workload and systemic pressures, which were recurrent themes in judges' testimonies, highlighting the need for not only better management of cases that are currently very unevenly distributed across Slovenia's courts, but also a better support system to manage the intense demands of their roles effectively.

> "When you're faced with deciding fifteen cases in a single day, it's obvious you can't dedicate the same amount of energy, time and effort to each case that you could if you were handling only three. (Judge 2)
> You need a kind of valve /.../ and the best way to do that now /.../, at least I think so, is to talk to someone who has been in a similar situation /.../. Unfortunately, it's only the judges of this court [that face this problem of a huge caseload, but], /.../it's lucky that there are [a number] of us, so somehow you find someone to talk to. But it's tough when you're handling fifteen cases a day, and then you try to discuss it with someone who only has two cases a week. All I get as feedback is 'Oh poor you, how can you even do this?' Yeah, I didn't want to hear that." (Judge 3)

Moreover, judges have generally expressed a strong desire for specialised training in handling these procedures, as they are distinct from their usual cases. They seek more expertise in this area due to these cases' specific and unfamiliar nature. They have highlighted the lack of transparency and availability of information about social welfare institutions as a major issue, noting that they often spend excessive time familiarising themselves with this information during specific cases. The need for better access to relevant information and training resources was also emphasised. The Ombudsman's representative affirmed this need when asked if judges should receive more specialised training to understand these procedures better. He noted:

> "Judges /.../ stress the need for this. We talk about it at the Mental Health Days and I think there is also awareness among judges, but we will soon come to the point where we will need specialisation in all areas, special departments and so on, certainly, special skills, special approaches are needed" and "/.../there is already some training here, /.../ how to put it, certain judges are devoting more time to it /.../." (Ombudsman representative)

5.2.2 Psychiatric Experts

The role of psychiatric experts is undeniably crucial in these proceedings, as they provide the necessary scientific foundation for decisions. However, the actual practice of how this input is implemented is often less straightforward than desired.

The first point of contention seems to be the process of appointing experts in specific cases.

> "You never see just one expert being appointed /.../ It's always the same few, and they are familiar to the judges, so they just write everything down for you, and the judges summarise it. It's like one big, happy family." (Judge 3)

This statement suggests a level of familiarity between judges and certain expert psychiatrists that could lead to biased or predictable outcomes, raising concerns about transparency and potential misconduct. Another judge echoed this sentiment, noting the problematic nature of these "informal attachments":

> "And then, I would say, certain informal connections are established, which can be problematic in terms of potential corruption or lack of transparency. For instance, if I am a family judge, I might consistently appoint the same expert, someone whose views align with mine, or with whom I have a mutual understanding." (Judge 2)

However, the same judge acknowledged a practical reason for relying on familiar experts:

> "Judges generally prefer experts who are quick, provide what they consider to be solid expert opinions, and can competently defend their positions in court. /.../ this then becomes known throughout the court." (Judge 2)

These insights underscore the tension between the need for reliable, efficient experts and the risk of over-reliance on a small, familiar group, which could compromise the fairness and transparency of the process. The shortage of available experts only exacerbates these challenges, making it difficult for judges to find qualified individuals who can meet the demands of these time-sensitive and complex cases.

> "When we struggle to find experts, or it's always the same ones, it highlights the need for a larger pool of professionals willing to take on these cases. In [our court], for example, it's common to handle ten to fifteen cases a day, from morning until 6 p.m. /.../ Secondly, this raises questions about the quality of expert opinions /.../, particularly in emergency procedures /.../ and then how do these experts manage if, for example, a hearing has to be held in one day /.../ how do these experts manage to deliver a thorough evaluation in such a short time frame? How do they even access all the necessary documentation?" (Judge 2)

However, a different, perhaps more troubling point of contention is the significant influence that experts wield in compulsory institutionalisation proceedings. According to our respondents, courts often rely heavily on the expert's opinion to the extent that they essentially copy the expert's diagnosis and recommendations into their final decisions. This seems to trouble some of them, especially considering that the expert diagnosis and summary of the person's condition and needs are often made without having witnessed the incident in question. Instead, the expert assessments are generally only based on a review of medical records, conversations with the person's treating physician, and interviews with the individual – though the latter is only possible in about a quarter of the cases.

On the other hand, some interviewees argued that experts, being specialists in their fields, are best equipped to determine the most appropriate course of treatment for the individual. The trust that legal professionals place in experts was illustrated by an attorney's remark that she had never seen a situation where either she or the judge disagreed with the expert's opinion. Moreover, their expertise makes their opinions almost unchallengeable:

> "If an expert gives a definitive opinion /.../ it's nearly impossible to contest it." (Attorney)

However, experts themselves are more critical towards how their role is perceived.

> "A lot of the process is based on the expert's opinion, though I have encountered judges who /.../ have asked additional questions, lawyers have also fought for their patients, and, above all, the representatives /.../ who come in and who are really on their side. /.../ I think that this system must be such that it must be upgraded and that as many times as possible it must be ensured that those who are close to them /.../, those who really stand by them, are also involved in these procedures. However, in most cases, it's a routine procedure where the court depends significantly on the expert's assessment." (Psychiatric expert)

Representatives from the Ombudsman's office have also raised concerns about the courts' tendency to rely almost exclusively on expert opinions in their decision-making, despite instances where some experts may not adequately fulfil their responsibilities. This excessive dependence on experts, along with potential biases, presents a significant challenge.

Some respondents pointed towards a potential systemic bias in this respect, where it seems that psychiatrists often prioritise the treatment and thus detention of the individual above all else.

> "Psychiatrists typically see the potential harm to a person's health as paramount if they are not treated." (Judge 4)

5.2.3 Attorneys

As explained earlier, attorneys serve as guardians of individual rights in these cases. They are generally appointed *ex officio.* One judge, for example, noted that in her 30-year career, she has never encountered a situation where an attorney was appointed by the individual involved in such proceedings.

Moreover, the *ex officio* role comes with a significant reduction in the expected remuneration attorneys receive. In fact, the low pay associated with this work might affect or might be seen to affect the calibre of legal representation:

> "/…/ this is a very poorly paid service /.../ so it is not done by those who can't wait to do it, and it is not done by the [attorneys of the] major leagues, or the second leagues, or the third leagues, but by those who depend on it for their livelihood." (Judge 1)

Furthermore, the nature of *ex officio* appointments often results in attorneys having no prior knowledge of the client's case and personal background, which can hinder their ability to provide effective representation when paralleled by strict and short timelines. Moreover, it causes different attorneys to represent an individual whose case repeatedly comes to the court, which limits the attorney's options for continuity and familiarity with the client's history.

Despite the role of active legal advocacy being crucial, it varies significantly among attorneys, sometimes seeming nothing less than perfunctory. Judges emphasised the importance of attorneys providing additional, quality information to challenge or complement expert opinions and found it crucial for a balanced adjudication process:

> "It seems to me that in all these cases, what is important is the expert opinion /.../ In order to be critical of the expert opinion, you have to have some other information somewhere, or some quality information from the attorney, or some information about alternatives." (Judge 2)

Their level of involvement, however, depends on the specifics of each case. Judges seem to believe that in some cases, attorneys inherently understand the need for the individual to be placed in social care detention and might, as a result, not be as active. In other cases, however, they are much more active:

> "I mean, the lawyer, as far as I am concerned, is [an] equal [party] in the procedure and I always deal with it if they have comments, additional questions, etc." (Judge 4)

This was confirmed by the interviewed attorney, who mentioned that she tries to have a quick conversation with her client, but often there is not enough time to engage meaningfully with the person she represents. Nonetheless, during the proceedings, she ensures that everything proceeds as it should, including questioning the expert and commenting as needed.

> "However, sometimes advocacy that seems too active may be unwelcome. One judge suggested that judges may be reluctant to appoint overly proactive attorneys in these proceedings, as they might "cause trouble." (Judge 1)

Finally, considering the *ex officio* nature of their work, the tight deadlines and low remuneration, the final theme that emerged is unsurprising. Stakeholders found that a lack of specialised skills among attorneys, particularly in complex cases, is concerning.

> "I think that /.../ these are people who don't have specialised skills, because these are people who are on the list [of lawyers], who just turn up /.../." (Judge 2)

5.2.4 Other Stakeholders

According to our interviewees, other potential stakeholders in the process are notably inactive. They consistently reported that the Social Work Centre is understaffed and burdened with a multitude of other responsibilities, including supervisory treatment. As a result, the Centre is often not actively involved in these proceedings, even as an initiator. Additionally, other entities, such as social welfare institutions, are infrequently engaged in the procedures.

Moreover, interviewees generally reported that mental health rights representatives were rarely, if ever, involved in proceedings. An attorney, for instance, mentioned that she had never encountered a mental health representative in such cases. The Ombudsman suggested that one reason for this is that representatives must be specifically requested or appointed by the individual rather than becoming involved automatically. The infrequent involvement of representatives might also partly be attributed to the rapid pace of proceedings.

> "No, but speed is again one part of it, isn't it? Now, if a person is admitted one day before, and I'm holding the hearing at nine o'clock in the morning /.../ I mean time-wise there hasn't even been a chance for him (the representative) to be selected." (Judge 3)

However, stakeholders feel that in the rare cases when representatives were involved, they actively participated by offering explanations, speaking with the individual and providing their insights.

However, their weight seems less relevant than perhaps expected. When asked if a representative had ever changed her perspective on a case, the judge responded:

> "No, no, because he is also not someone who has been with the person for the last fortnight all the time, so that maybe he could, but he is someone again who has just familiarised himself with what I know." (Judge 3)

5.3 Thinking about Alternatives

Our final theme shifts focus from the existing regulations and current practices towards the potential for alternatives to the current institutional model, particularly emphasising community-based services.

In practice, alternative arrangements seem to be very scarce and rarely used in Slovenia. Interviewees, particularly judges, expressed concerns about the normative framework itself in this aspect. They believe that the law, due to its ambiguous and non-prescriptive nature, theoretically allows for alternative measures that are not explicitly outlined. The

law emphasises the *ultima ratio* principle – that placement in a social welfare institution should be a last resort – which suggests an openness to alternatives. However, these alternatives are not clearly defined within the legal text. The only alternative measure explicitly regulated by law is supervised treatment, a mechanism intended to reflect the trend towards deinstitutionalisation by offering a less coercive option than forced or non-consensual placement in a social welfare institution. However, interviewees criticised the effectiveness of supervised treatment, citing systemic issues such as tight deadlines and a lack of transparency. They unanimously agreed that supervised treatment, as currently implemented, is ineffective.

> "Yes /.../, the law allows me to choose supervised treatment or institutional placement during an emergency admission, /.../ but in practice, this doesn't work. The hospital needs to prepare a program /.../, ensure coordinators are available, and agree to it, all within a very short time. /.../ meanwhile, the person remains in emergency admission. This whole process of exploring alternatives should have been addressed earlier /.../. We need interim solutions /.../, like transitional homes or crisis centres /.../, similar to what we have for children /.../, but those options don't exist." (Judge 3)

Judges also described supervised treatment as an ineffective hybrid measure that, despite its consensual basis, still involves an element of judicial coercion. The law presumes that alternatives, particularly milder measures, depend heavily on the individual's willingness to cooperate. However, this reliance on consent often undermines the efficacy of the measure, a sentiment echoed by the psychiatric expert.

> "Milder measures often depend on the individual's cooperation /.../, which is inherently linked to their consent. /.../ if a person isn't willing to engage with the treatment /.../, even if it's considered less intrusive, we're still using coercive means to some extent. That's why supervised treatment remains a judicial procedure /.../ if the person doesn't accept it or agree to it, it's pointless to impose it. We've just delayed the inevitable." (Judge 3)

Moreover, the issues discussed in previous sub-themes – such as the lack of comprehensive records and the systemic challenges faced by judges – are reiterated here. Interviewees agree that legal openness rather than "over-normativity" is a good thing, leaving room for possible alternatives, but these must be properly defined – not necessarily in the law. The absence of adequate records on available alternatives complicates the decision-making process, particularly under the pressure of short deadlines. Judges stressed the need for a well-maintained, up-to-date record of available alternatives and programmes that could be immediately utilised in urgent situations rather than being accessible only after several months.

When discussing deinstitutionalisation more in general, as an ideal, all stakeholders felt that while a system of deinstitutionalisation is possible, it may not be suitable for everyone currently in social care detention. Most expressed support for alternatives to institutionalisation, although some viewed these alternatives as somewhat utopian. A majority emphasised that a complete abolition of social welfare detention and institutions, in general, is unrealistic, particularly for the most severe cases – those unable to express consent or make decisions regarding their care. They felt that certain individuals truly require continuous, specialised care that cannot be provided in a home environment. However, the mass of these cases could potentially be much smaller than it currently is. Respondents suggested that a significant majority of institutionalised people could be cared for elsewhere, with some suggesting up to 80% of them.

> "I believe that the majority of involuntary admissions are unnecessary and that most of these cases could be managed with appropriate community-based treatment, if provided in a timely manner. /.../ [However,] with over forty years of experience, I can confidently say that there are some cases where community-based care is probably not feasible." (Psychiatric expert)

In the stakeholders' views, one of the greater barriers is monetary.

> "The limits are set by how much money we are willing to invest. Whether it's an NGO or a public institution, the essential goal is for the person to return to their community and benefit from the social network they had before. But this process is not cheap. Instead of concentrating care in one institution, you need to provide support services across Slovenia, tailored to each individual's environment." (Ombudsman's representative)
> "It all comes down to money – how it's allocated and managed. What are the priorities?" (Judge 4)

Several interviewees raised concerns about the state's ability to allocate the necessary resources – both financial and human – to support such alternatives. One judge observed:

> "The ideal is always within reach, but what makes it realistic or achievable in everyday life? In theory, every individual could live in a home environment with adequate support, but at some point, a line is drawn. If that support requires ten people dedicated to 24-hour care, addressing physical, mental and emotional needs, there are bound to be limitations—both in terms of staffing and resources. And, of course, money is the next hurdle." (Judge 2)

However, the notion that money is the only obstacle was countered by some:

> "I believe our commitment to deinstitutionalisation has been extremely shallow. If you examine the funding, far more is allocated to institutional care than to community-based services, de-

> spite the 2018 reform of the national mental health programme. European funds earmarked for deinstitutionalisation often end up invested in institutions. The progress we've made has been limited—just a few housing groups—and even that has lacked significant impact." (Psychiatric expert)

Regardless of their support for deinstitutionalisation, however, stakeholders felt that a certain limited number of people could not feasibly be de-institutionalised. Often, those are the very individuals placed in social care detention.

> "We shouldn't start deinstitutionalisation with secure units, as some NGOs propose. Instead, we need to begin with open units, where residents are genuinely capable of returning to the community. Those needing more protection should still have space in existing institutions." (Ombudsman's representative)

6 Discussion

The complexities surrounding social care detention captured through the normative analysis and the multifaceted perspectives presented in our qualitative analysis align with the themes discussed in the literature review. This discussion draws upon the established framework to examine the law's adequacy and limitations, the participants' roles within the system and the broader societal attitudes towards deinstitutionalisation, reflecting on current practices and potential reforms.

6.1 Legal Framework

While the Mental Health Act (»ZDZdr«, 2008) provides a robust legal foundation, its practical application reveals significant shortcomings. As seen in other systems, although the law is designed to safeguard human rights and provide clarity (Richardson, 2003; Series, 2022), it often struggles to balance the urgency of proceedings with the need for thorough evaluations. As the literature indicates, the lack of detailed provisions mirrors our findings, where stakeholders express the need for greater precision and the challenges of adhering to tight procedural timelines. This echoes Goffman's (1961) insights into how bureaucratic processes can sometimes strip individuals of their autonomy, emphasising the need for a legal framework that better accommodates the complexities of individual cases. Crafting effective criteria for social care detention is inherently challenging due to the variability and unpredictability of cases. Legal criteria need to strike a delicate balance between being too narrow, which may exclude those in need, and too broad, which can lead to over-institutionalisation. This balance is difficult to achieve in practice, where the unique circumstances of each case can defy simple categorisation and require nuanced judgement.

Additionally, despite the principle that social care detention should be a last resort, there is a noticeable lack of viable alternatives to institutionalisation. This shortage undermines the law's intent and limits the options available to individuals who might be better served by less restrictive environments.

6.2 Roles of Stakeholders

As revealed in our interviews, psychiatric experts' significant influence resonates with broader academic discussions on power dynamics within institutional settings (Foucault, 1991; Scull, 2016). In the realm of social care detention, experts' dominant roles often streamline legal processes to the extent that other crucial stakeholders—such as lawyers and judges—are overshadowed. This imbalance concerns not merely expertise overshadowing legal rigour, but also the preparation and systemic support that legal professionals receive. Attorneys, typically appointed *ex officio* and remunerated inadequately, may lack the specialised knowledge and motivation required for these complex cases. Judges, while gatekeepers of procedural integrity, find themselves relying heavily on expert opinions due to the technical nature of the evidence and the high stakes involved, which can lead to expedited and potentially superficial legal proceedings.

While understandable given their specialised knowledge, the dominance of psychiatric experts becomes problematic when it compromises the breadth and depth of the judicial review. This over-reliance on experts can inadvertently diminish the role of human rights in legal proceedings, turning what should be a multifaceted decision-making process into a perfunctory validation of expert opinions. The scenario often results in a diminished capacity for legal professionals to effectively challenge or contextualise psychiatric assessments, potentially leading to decisions that might not fully consider the individual's broader social, psychological and legal needs.

Furthermore, the dynamics among these stakeholders are significantly shaped by systemic elements such as pay structures and appointment mechanisms. The way in which psychiatric experts, lawyers and judges are integrated into the legal process often reflects broader systemic priorities and resource allocations, which can skew the process towards certain outcomes. For instance, the fact that experts are few and familiar can lead to a kind of informal consensus or a "closed shop" mentality, where the same views and approaches are recycled without sufficient scrutiny or challenge.

This systemic skew calls for critically examining how roles are defined and supported within the judicial system. An integrated approach, as suggested by Gooding et al. (2018), that promotes collaboration among all stakeholders could enhance

the fairness and efficacy of decisions. Such models advocate for multidisciplinary teams where legal, psychiatric and social welfare professionals work together to ensure well-rounded decisions and respect of individuals' rights and needs. In doing so, the system can move towards a more balanced consideration of medical expertise and human rights, ensuring that all stakeholders have a meaningful impact on the outcomes of social care detention proceedings. This reevaluation of roles and systemic support is crucial not only for improving individual case outcomes but also for upholding the integrity and humanity of the legal process itself.

6.3 Deinstitutionalisation

Despite widespread theoretical support for deinstitutionalisation (Legemaate, 2003; Szmukler, 2020), a significant gap persists between the ideals and their practical implementation. This discrepancy highlights a kind of systemic hypocrisy where lofty principles confront ground realities. Stakeholders often hesitate to fully embrace alternative care models, reflecting deep-rooted societal and systemic challenges. This reluctance to move away from institutional care as the default option can be traced back to historical patterns of segregation and the treatment of those deemed different or incapable of self-management, which Goffman (1961) incisively critiqued.

This contradiction is particularly evident when contrasting the aspirational goals of the CRPD (United Nations, 2006) with the more operational frameworks such as the ECHR (Council of Europe, 1950). The CRPD promotes an ambitious vision of inclusivity and equal rights, advocating for the full integration of persons with disabilities into society and vehemently opposing any form of discrimination or segregation. In contrast, the ECHR took a more pragmatic approach, often balancing the rights of individuals against what is deemed necessary for the protection of public health or the rights of others, which can include provisions for detention under certain conditions.

This juxtaposition of the CRPD's high ideals with the ECHR's pragmatic legal measures reflects a broader systemic issue: while international law may proclaim the rights of individuals to live freely within the community, national laws and practices often lag, maintaining more conservative, risk-averse approaches that favour institutionalisation. This systemic hypocrisy not only undermines the rights of individuals but also perpetuates outdated practices that fail to recognise the potential of more integrated, community-based solutions.

However, this discrepancy not only reflects a systemic divide between international and national levels of human rights protection but also mirrors internal inconsistencies within national laws and the perspectives of stakeholders involved in the process.

National laws often proclaim detention as a last resort yet fail to offer viable alternative solutions, creating a legal contradiction where the policy does not align with practice. This internal divide within the legal system reveals a lack of comprehensive planning and resource allocation that would enable the practical application of these laws, thus hindering genuine deinstitutionalisation efforts.

Similarly, among stakeholders, there is a personal divide. While there is general agreement on the need for alternatives to institutional care, many perceive substantial obstacles and exceptions that make these alternatives seem impractical. Stakeholders often express concerns about the feasibility of deinstitutionalisation, citing a lack of infrastructure, resources, or community support to effectively manage individuals outside of institutional settings.

This juxtaposition of aspirational goals against a backdrop of practical challenges and systemic inadequacies underscores the need for a more coherent approach that aligns high-level policy with ground-level realities. Addressing these divides requires not only legislative reforms to provide clear, practical alternatives but also a cultural shift among stakeholders to embrace these changes, ensuring that the principles of dignity and autonomy are not just theoretical aspirations but are actively realised in everyday practices.

7 Conclusion

In this paper, we have delved into the intricate landscape of social care detention and shed light on the multifaceted roles of stakeholders, the operational challenges within the legal framework, and attitudes towards deinstitutionalisation. Our analysis reveals a discrepancy between the theoretical frameworks supporting human rights and their practical enforcement. This discrepancy highlights systemic issues such as the over-reliance on psychiatric expertise at the expense of comprehensive legal oversight, the lack of viable alternatives to institutional care, and the persistent underfunding and underdevelopment of community-based care options.

Despite the richness of international discourse and frameworks such as the CRPD, which advocate for robust rights protections and the integration of persons with disabilities into society, the reality on the ground remains starkly different. While national laws stipulate that detention should be a measure of last resort, they often do not support this mandate with practical, feasible alternatives, reflecting a significant gap

between policy intentions and their execution. This situation is exacerbated by the limited scope of existing literature, especially in Slovenian contexts, which fails to capture social care detention's nuances and ongoing challenges. The lack of detailed, localised studies in this area hinders our understanding and ability to reform these crucial systems.

Further research is critically needed to bridge these gaps, with a particular focus on exploring how detention practices can be aligned more closely with human rights standards. Such studies are essential to illuminate the lived realities of those placed in social care detention – often some of society's most vulnerable – and to ensure that their rights and dignity are not just protected in theory but vigorously upheld in practice. Moving forward, expanding the academic and practical inquiry into this under-researched area seems necessary. As a discipline, criminology could play a crucial role in this endeavour. The field's established focus on outsiders and marginal groups positions it uniquely to critically examine and address the systemic issues in social care detention, potentially more effectively than traditional civil law frameworks. By integrating criminological perspectives with legal and human rights approaches, we can challenge the systemic norms that currently govern these practices and advocate for a legal and operational overhaul that truly reflects the principles of justice and equity.

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Postavljanje ljudi za zaprta vrata: Analiza nameščanja v varovane oddelke socialno-varstvenih zavodov v Sloveniji

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Članek obravnava kompleksno področje varovanih oddelkov v socialno varstvenih zavodih v Sloveniji. Študija vključuje temeljito pravno analizo in obsežno kvalitativno raziskavo, ki temelji na intervjujih in razpravah s ključnimi deležniki, vključenimi v postopek namestitve v varovane oddelke. Preučuje ravnovesje med varovanjem človekovih pravic in operativnimi izzivi zakona, vpliv psihiatrične stroke na pravne postopke in stališča sogovornikov do dezinstitucionalizacije. Ugotovitve razkrivajo pomembno neskladje med teoretičnimi nameni in praktičnim izvajanjem ter poudarjajo pretirano zanašanje na psihiatrične ocene, ki lahko pravne vidike potisnejo na rob. Poleg tega kljub zakonodajnim načelom, ki zaprte varovane oddelke postavljajo kot ukrep *ultima ratio*, obstaja očitno pomanjkanje izvedljivih alternativ, kar otežuje prizadevanja za dezinstitucionalizacijo. Članek poudarja potrebo po nadaljnjih raziskavah, da bi bolje razumeli in omogočili preoblikovanje praks, ki obkrožajo zapiranje nekaterih najbolj ranljivih posameznikov v družbi, zlasti v slovenskem kontekstu, kjer je literature izjemno malo. S pomočjo multidisciplinarnega pristopa ta raziskava prispeva k ponovnemu vrednotenju obstoječih rešitev in se zavzema za vsebinske ter postopkovne reforme, ki bodo bolje usklajene s standardi varovanja človekovih pravic.

Ključne besede: posebni varovani oddelki, socialno varstveni zavodi, človekove pravice, postopek, institucionalizacija, Slovenija

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