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The Danish Court Case Database: a data source in forensic mental health?

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Abstract:

Grey literature complementing evidence from common scientific sources, such as journals, may serve to provide a broader range of evidence, fill in commercial literature gaps and reduce publication bias in research. However, grey literature from legal sources has been used only to a limited extent in forensic mental health research. In this paper, we presented the newly established Danish Court Case Database in the light of forensic mental health. A systematic review was conducted and 15 cases focusing on forensic mental health issues were identified. The cases contained information about indictment, explanations and testimonies and also the court's decision and underlying reasoning. The different included case types provided a broad range of information about current issues in forensic mental health regulation and the interpretation of Danish law. The database is thus a relevant grey source in forensic research. However, this paper also demonstrated that the database may be improved in terms of its current coverage and ease of use.

Keywords:

Alternative search method, criminal cases, database search, Denmark, forensic psychiatry, grey literature, literature review, publication bias, systematic review, unpublished literature

INTRODUCTION

International support for including so-called grey literature in research has been mounting [1-4]. In this respect, the newly established Danish Court Case Database (DCCD; Danish: Domsdatabasen [5]) may serve as a source of evidence for researchers with an interest in forensic mental health issues. Different definitions of 'grey literature' have been proposed. One commonly used definition was suggested by the Third International Conference on Grey Literature [6, 7]. According to the Conference, grey literature refers to 'that which is produced on all levels of government, academics, business and industry in print and electronic formats, but which is not controlled by commercial publishers' [7]. Hence, databases including, for example, legal cases constitute an obvious example of grey literature. Some mental health law research has been conducted using, e.g., the Danish Psychiatric Patient Complaints Board's (Danish: Det Psykiatriske Patientklagenævn) collection of board decisions in published yearbooks [8, 9]. Otherwise, although legal elements are an inevitable part of practice, the tendency to include legal sources in terms of evidence for forensic mental health research has been limited.

In this paper, our aim is to present the DCCD and systematically review its cases on forensic mental health to determine the database's usefulness as a data source in the field of forensic mental health. First, we describe the DCCD; subsequently, its cases on forensic mental health are identified and presented. In order to review the usefulness of the database, the contents of included cases are summarised in terms of year, case types and notes describing the case.

THE DANISH COURT CASE DATABASE

The DCCD [5] became operational as per 6 January 2022. The database is free and open to everyone and available on the Danish-language website domstolsdatabasen.dk. The database provides the case decision, including some basic information typically supplemented by a case summary [10]. All material is pseudonymised in pursuance of Danish law and, therefore, parts of cases may have been be crossed out or omitted [10]. From the establishment of the DCCD, only recently completed case decisions have been included; these are mostly civil cases, but a small number of criminal case decisions were included based on their 'special public interest' (n=104; 4 February 2022) according to information provided by the database [10]. However, plans exist to include criminal cases to the database in the future [10]. Expectedly, primarily criminal cases are relevant to forensic mental health research. To allow researchers to implement a search strategy, the DCCD contains several search tools such as Boolean and proximity operators and truncation in line with more traditional health databases (e.g., APA PsycINFO, CINAHL, PubMed). Furthermore, various automation tools are available. These tools allow users to narrow down searches and refine results by, e.g., date, court or case type [10]. In Denmark and in other modern democratic states, transparency of legislative processes and judicial proceedings is considered a hallmark of the rule of law and democracy. In conjunction with other legal databases (e.g., the Danish Supreme Court Database [11]), the DCCD contributes to maintaining transparency.

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FORENSIC MENTAL HEALTH CASES IN THE DCCD

Search strategy

To identify relevant cases, a systematic search was conducted comprising three steps [2]: firstly, a search in the DCCD was conducted to create an overview of the usability of the database, including any search/automation tools of relevance, and to identify relevant search terms appropriate for the further search process. Secondly, the identified search terms were combined with the Boolean operator 'OR' in the following search string: 'psychiatry OR forensic psychiatry OR detention OR measure' (Danish: 'psykiatri OR retspsykiatri OR anbringelse OR foranstaltning'). The final search date was 4 February 2022 and updated 11 August 2022. The search was performed by the first author. Finally, the included cases were examined for additional search options and information from other courts (e.g., if an appeal had been made).

Screening and selection

The search and screening process was as follows: initially, 56 cases were identified. Hereafter, the number of cases was reduced to 42 by using automation tools: professional group; criminal case (Danish: Faggruppe; straffesag). Subsequently, the 42 remaining cases were assessed by full-text reading. This excluded an additional 36 cases, while six cases were included. The updated search identified nine additional cases. Finally, 15 cases were included in the present paper. Included cases should address issues relating to forensic mental health hospitalisation or case decisions leading to forensic mental health measures, both in relation to new judgments and the upholding of existing judgements. In Denmark, forensic mental health measures may be court orders placing people in mental health detention (Danish: Anbringelsesdom) or mandatory mental health care or treatment (Danish: Behandlingsdom) [12].

Description of cases

As shown in Table 1, 15 cases concerning forensic mental health issues were included in this paper. The cases reported decisions handed down by the court system from 2003 to 2022 across geographical settings. The available case information included the indictment, i.e., the sentence recommended by the prosecuting authority; information, such as explanations and testimony; and the court's decision and underlying reasoning. In the six cases involving lay judges (Danish: Almindelig domsmandssag), the sentences established mental health treatment [13-18]. One of the cases concerned a forensic mental health inpatient where the crime had occurred during hospitalisation. In this case, the existing treatment sentence was upheld [13]. However, two out of the six cases involving lay judges changed type in the appeals system [17, 18]. Of these, one was reported as a plea-of-guilty case (Danish: Tilståelsessag) in the district court and changed to a case involving lay judges in the high court [17]; in the other case, only the cost decision was appealed to the high court where the type of this case was reported as other cases [18]. In the two cases concerning change of conditions and measures of forensic mental health inpatients, both persons were placed in Denmark's only high-security hospital (Sikringsafdelingen); the measures were maintained [19, 20]. The three jury trials (Danish: Nævningesag) sentenced to placing in a mental health detention [21-23]. The two cases there were preliminary statutory hearings (Danish: Grundlovssag) [24, 25], and the two remaining cases, reported as other cases [26, 27], concerned other issues in connection with forensic mental health hospitalisation. An overview of the included cases with further details is provided in Table 1.

DISCUSSION

In this paper, we presented the DCCD and 15 identified cases on forensic mental health, containing information about indictments, explanations and testimonies and also information about the court's decision and underlying reasoning. The different case types and decisions reported include a broad range of information about current issues in forensic mental health regulation and the interpretation of Danish law. Thus, this paper provides an overview of the DCCD's usefulness as a data source in the field of forensic mental health.

The DCCD's major limitation at present is its coverage, which is limited in regard to content relevant for forensic mental health research. Some groups of criminal cases are not currently available in the database because criminal cases are made publicly available only provided they are of 'special public interest' [10]. Furthermore, 'special public interest' is not defined in the database information material; nor is it described who determines whether a case meets this criterion. Therefore, it is impossible for outsiders to assess to which extent cases concerning forensic mental health issues may have been omitted from the DCCD and if particular types of cases are systematically left out. Since some of the research objectives of using grey literature from sources such as the DCCD are to extend the existing range of evidence, to fill gaps in commercial literature and to reduce publication bias [2-4], it is problematic that cases in the database are included or excluded without further clarification. However, some reported data in the DCCD may not be available elsewhere, which may make the database the only option. Much evidence is not published through commercial providers (e.g., scientific journals), and grey literature may, in some situations, be the only solution allowing researchers to provide a more complete overview of the available evidence in a field [28, 29]. For instance, Adams et al. [30] identified predominantly, or only, information related to some public health research questions as grey literature.

The DCCD's usability is another limitation which is rooted in the fact that its content has not been optimised for searching [10]. The cases in the database are made publicly available as they are and the search terms do not appear to include, e.g., any misspellings. Furthermore, filtered searching, e.g., in case conclusions only, is not possible, ensuring that a larger number of potentially relevant cases are identified and reviewed more quickly. As the number of criminal cases in the database increases, the current search approach, as the one adopted in the present paper, will therefore consume further time and resources [31]. The DCCD may benefit from addition of more advanced search functions, e.g., indexed key and search terms, as currently only free-text searches are possible. Since grey literature from sources such as the DCCD is often omitted from research because its acquisition may be considered troublesome and incompatible with the need for a systematic and transparent process [1, 4, 32], the database's various automation and search tools designed for use in search strategies are a strength [10]. Still, more may be done to increase the database's usability.

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Table 1. Overview of included cases

Court case number(s)	Year	Case type(s)	Notes
SS-3828/2019-HEL; SS-187/2020-OLR; SS-82/2020-HJR [27]	2020-22	Other cases	The person had a sentence of placing in a mental health detention. This measure was later changed to a sentence with conditions of mental health treatment. Subsequently, the person is to be deported from the country. The case concerned the deportation conditions in connection with discharge and outpatient treatment. The deportation sentence was repealed.
SS-4352/2021-NAE [19]	2021	Change of conditions and measures	The person had a sentence of placing in a mental health detention with no maximum term of the measure; currently in a high-security hospital. This measure was maintained.
SS-3999/2021-NAE [20]	2021	Change of conditions and measures	The person had a sentence of placing in a mental health detention with no maximum term of the measure; currently in a high-security hospital. This measure was maintained.
SS-2972/2021-NAE [15]	2021	Involving lay judges	The person was sentenced with condition of mental health treatment with no maximum term of the measure. The person was sentenced to paying a compensation to the victim of the crime.
SS-2723/2021-ESB [21]	2021	Jury trial	The person had a sentence with conditions of mental health treatment. This measure was repealed. Instead, the person was sentenced to placing in a mental health detention with no maximum term of the measure. The person was sentenced to paying a compensation and evidence was confiscated.
SS-991/2021-HOL [22]	2021	Jury trial	The person was sentenced to placing in a mental health detention with no maximum term of the measure. Subsequently, the person is to be deported from the country.
SS-73/2021-HER [14]	2021	Involving lay judges	The person was sentenced with condition of mental health treatment with no maximum term of the measure.
SS-31800/2020-KBH [23]	2021	Jury trial	The person was sentenced to placing in a mental health detention with no maximum term of the measure. The person was sentenced to paying a compensation to the victim of the crime and evidence was confiscated.
SS-12050/2020-ARH [13]	2021	Involving lay judges	The person had a sentence with conditions of mental health treatment and a maximum term of five years. The case concerned crime committed during forensic mental health hospitalisation. The person was sentenced to remain on the existing forensic measure.
SS-80/2018-KBH; SS-1931/2018-OLR [18]	2018	Involving lay judges; other cases	The person was sentenced with conditions of mental health treatment with no maximum term of the measure. This measure was as a starting point for an outpatient procedure. Evidence was confiscated. Only the cost decision was appealed.
SS-104/2018-OLR [24]	2018	Preliminary statutory hearing	The person was sentenced with conditions of mental health treatment and a maximum term of five years. This measure was appealed. The case concerned mental health detention until decision in the appeal case. The detention was maintained.
SS-5004/2016-KBH; SS-1966/2017-OLR [16]	2017	Involving lay judges	The person was sentenced with conditions of mental health treatment and a maximum term of five years. This measure was as a starting point of an outpatient procedure. The person received a suspended sentence regarding deportation from the country.
SS-3110/2014-ALB; SS-1738/2014-VLR [17]	2014-15	Plea-of-guilty case; involving lay judges	The person was sentenced with conditions of mental health treatment with no maximum term of the measure. Subsequently, the person is to be transferred to prison for the remaining sentence of 11 years.
SS-2388/2010-NYK; SS-2571/2010-OLR [25]	2010	Preliminary statutory hearing	The person was hospitalised in a forensic mental health setting for a psychiatric report. The case concerned the ward where the report was to be made and whether this could be changed. The original forensic setting was maintained.
SS-151/2003-NSJ; SS-3121/2003-OLR; SS-517/2003-HJR [26]	2003-04	Other cases	The person was hospitalised in forensic mental health setting for a psychiatric report. The case concerned the possibility of a new report due to the risk of staff incapacity. Among other things, the person was charged for a crime committed against staff during this hospitalisation. The original psychiatric report was maintained.

District Court: ALB, Aalborg; ARH, Aarhus; ESB, Esbjerg; HEL, Helsingør; HOL, Holstebro; KBH, Copenhagen; NAE, Næstved; NSJ, Nykøbing Sjælland; NYK, Nykøbing Falster
High Court: OLR, Eastern Division; VLR, Western Division
Supreme Court: HJR

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In addition to the issues above concerning the DCCD's usability, other elements may also affect the dissemination of the database. As stated in the presentation of the DCCD, the database is available on a Danish-language website; thus, case data may be difficult to use as evidence abroad. Linguistic challenges may hamper access to and use of many types of evidence, including grey literature from sources such as the DCCD [2, 30]. However, this should not stop its use if the competences are available, as published research may make this evidence useful to a wider audience, including researchers abroad. Furthermore, international analysis has shown how knowledge about mental health care and legislation across settings can be included [33-36]. In such collaboration, data from the DCCD may be a useful contribution from a Danish context. Additionally, the 'legal language' used in case law material may also discourage some health researchers from using this data source. Thus, the wide range of information on the interpretation of central Danish forensic mental health regulation, which is offered in the DCCD, may not be used to its full potential. This constitutes an additional argument underpinning why the search process should support rather than deter the use of the database for researchers who are interested in forensic mental health issues.

Finally, according to information provided by the DCCD [10], the database's pseudonymisation of cases means that both directly and indirectly identifiable information is changed in the cases to protect those involved. However, this pseudonymisation of cases may be insufficient; thus, there may be a risk of identifiable data in the DCCD [37]. In Denmark, research ethics approval is generally not required for non-intervention studies and, furthermore, no participants were recruited using cases from the DCCD [38]. However, a grey area may exist where research of published data from sources such as the DCCD becomes a primary piece of research [30, 37]. This grey area occurs, for example, if the provider of the DCCD is contacted with clarifying questions for incompletely registered case data [30]. These above examples may create some ethical issues in the use of the DCCD regarding, e.g., informed consent to participate in research [37], which should be further considered by research ethics organisations [30, 37].

CONCLUSIONS

The DCCD is a relevant data source of grey literature in the area of forensic mental health. The evidence in the database may provide insights into forensic mental health issues as well as the regulation and interpretation of Danish law that are difficult to obtain in other manners. However, some challenges are related to using the database, e.g., as the database currently does not include all criminal cases. This should be borne in mind if the database is used for research purposes. Furthermore, the limited ease of use of the current database search functions may potentially deter some researchers from using this resource. Hence, room exists for improvement of the search functions of the DCCD which may be an important data source for researchers interested in forensic mental health issues.

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