

Health Care Behind Bars

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With the support of the
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of the European Union

Introduction

- Do prison hospitals, wards, personnel provide adequate medical care?
- What are the prisoner's legal options to enforce health care access under international human rights law?

Health problems and dilemmas in prison

- Overcrowded prisons
 - Hunger strike in detention: Is forced treatment/feeding allowed?
 - Disciplinary sanctions and health personnel
 - Disproportionately high rate of mental disorders in prisons & ageing
 - HIV/AIDS and TB in prisons: HR or workplace safety issue?
 - Drug addiction in prison: needles and syring exchange
 - G'bay: Medical analysis of the interrogation techniques (GI report 2009, CIA Torture report 2014)
 - When physicians participate in executions
- <https://www.youtube.com/watch?v=VNmPx3BH11E>

Guiding principles for prison health care

- Equivalence of care
- Health care decisions must be made on clinical grounds & applying principles of medical ethics (confidentiality, dual loyalty conflicts)
- Health care provided by qualified health professional
- Doctrine of 'informed consent' and patient choice
- Medical experiments in prison: 'stories from the dark web'
<https://www.youtube.com/watch?v=IDXBKvaoXHc>

Basic Norms

- Art. 12 Int. Cov. on Economic, Social and Cultural Rights (ICESCR)
- Arts. 7 & 10 Int. Cov. on Civil and Political Rights (ICCPR)
- European Convention on Human Rights (ECHR, Art. 3)
- United Nations (1990) Basic Principles for the Treatment of Prisoners
- Revised European Prison Rules (EPR 2006) Committee of Ministers of the Council of Europe

Enforcing health care access behind bars

- Examples



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ECtHR and Healthcare: Art. 2

- *Edwards and others v. UK* (2002)

... the right to life 'enjoins the State not only to refrain from the intentional and unlawful taking of life, **but also to take appropriate steps to safeguard the lives of those within its jurisdiction**'

- *Tarariyeva vs Russia* (2002): **adequacy** of medical care at prison hospital:

'whether it possessed the necessary facilities to perform surgical interventions successfully and deal with **post-operative complications**'

ECtHR and Health care: Art. 3

- 'Living instrument'
- State obligations under article 3:
 - *Kudla v Poland* 30210/96 § 94:

... 'the State must ensure that a person is detained ... his health and well-being are adequately secured by, among other things, **providing him medical assistance**'...
 - *Pantea v Romania* (2003):

'to take the practical **preventive measures** necessary to protect the physical integrity and the health of persons who have been deprived of their liberty'. (scope of healthcare)
 - *McGlinchey v UK* (2001): **Timely access** to medical care

Inadequate medical treatment HIV positive detainee

Logvinenko v. Ukraine, ECtHR, no. 13448/07, judgment of 14 October 2010

- The applicant is currently serving a life sentence for murder. Prior to his detention he was diagnosed with tuberculosis of the lungs and later on with advanced-stage HIV (Aids).
- The Court noted that the applicant's general state of health appeared to have deteriorated during his stay in prison. Although some tests had been carried out and some medication had been given to him, *the medical treatment on the whole had not been prompt, coherent or regular*. As regards the HIV, for over eight years, *no tests had been carried out, nor had any discussion about any treatment taken place. ...*
- The Court concluded that the applicant had suffered inhuman or degrading treatment as a result of the **absence of comprehensive medical supervision and treatment** and that there had been a violation of Article 3.

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Detention and mental health

Rooman v. Belgium (ECtHR, no. 18052/11, 18 July 2017)

- The applicant complained of the lack of psychiatric care in the facility in which he was being detained.
- The Court found a violation of Article 3 (prohibition of inhuman or degrading treatment). The Court found, in particular, that the national authorities had not provided **adequate care for the detainee because of the lack of care staff who could speak German**, the only language he knew and one of Belgium's official languages. It held that the applicant, who had been **detained for 13 years without appropriate medical support or any realistic prospect of change**, had been subjected to distress of an intensity exceeding the unavoidable level of suffering inherent in detention.

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Refusal to drug substitution therapy in prison

Wenner v. Germany, no. 62303/13, 1 September 2016

- The case concerned the complaint by a long-term heroin addict that he had been denied drug substitution therapy in prison.
- A violation of **Article 3** (prohibition of inhuman or degrading treatment)?
- The Court came to the conclusion that the authorities, despite their obligation to protect the health of the prisoner, had **failed to examine** with the **help of independent and specialist medical expert advice**, against the background of a change in Mr Wenner's medical treatment, which therapy **was to be considered appropriate**.

Authorities' failure to prevent suicide in Prison

Ketreb v. France (38447/09)

- This case concerned the suicide in prison, by hanging, of a drug addict. The Court found that the State had *failed in its duty to show particular vigilance to prevent a vulnerable prisoner from committing suicide*.
- Ketreb was placed in the punishment block following an incident with a prison guard. On 8 January 1999 he was given a ten-day disciplinary sanction, and on the same date a doctor prescribed him Mogadon and a Valium injection, and scheduled a consultation for him with a psychiatrist. The doctor mentioned in writing in the medical file that, according to the guards, Kamel Ketreb had already made two attempts to commit suicide. On 13 January 1999 a psychiatrist observed that he was not at all well and seemed “capable of putting his suicidal inclinations into effect”.
- **Key issue: ‘whether the authorities had done all that could reasonably have been expected of them to prevent the risk of a new suicide attempt.’**
- ECtHR: violation of both Arts. 2 and 3 ECHR

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ECtHR and Healthcare: Art. 8

Dickson v UK (Romeo and Julia in jail) (Appl no 44362/04)

- Procreation case
- Positive obligation Artificial Insemination?
- Home Secretary: no exceptional circumstances
- ECtHR: Balancing conflicting interests and margin of appreciation
- Alternative ?

Discussion: Right to refusal and forced-feeding

- Prisoner A is confined to a prison medical facility, where he is serving a life term. On May 24 1991, while he was in prison, he jumped or fell off the wall. As a result, he fractured a cervical vertebra, rendering him quadriplegic. He lacks any physical sensation or bodily control below the shoulder.
- He suffers from a profoundly disabling and irreversible physical condition. Medical personnel must assist him with all bodily functions, and he must cooperate with them when he is being fed and given medication. His condition not only makes him fully dependent on others for all bodily functions, but also renders him susceptible to illness and infection that requires further medical attention.
- Since October 11, 1991 he has refused to be fed, causing severe weight loss and threatening his health. He has also refused necessary medication and treatment. Consequently, he is at risk of death. Staff psychiatrists have examined him and found him depressed about quadriplegic condition.

His physician would like to start life-sustaining forced treatment

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Discussion: Prisoners as (Living) Kidney Donors?

- *Living-donor kidney transplantation makes up a large proportion of kidney transplantation. To increase the transplantation rate, kidney donation by prisoners will be considered. Is that acceptable?*

Conclusion: People in prison retain their fundamental rights

- Except for those limitations that are demonstrably necessitated by the fact of incarceration, **all prisoners shall retain the human rights and fundamental freedoms** set out in the Universal Declaration of Human Rights, and the International Covenant on Economic, Social and Cultural Rights... as well as such other rights as are set out in other United Nations Covenants.

Principle 5 UN Basic Principles of the Treatment of Prisoners

- Role of courts to uphold these rights

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