Parliamentary Assembly
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Doc. 13924
23 November 2015

The fate of critically ill detainees in Europe

Committee Opinion[1]
Committee on Social Affairs, Health and Sustainable Development
Rapporteur: Mr Stefan SCHENNACH, Austria, Socialist Group

A. Conclusions of the committee

1. The Committee on Social Affairs, Health and Sustainable Development supports the report prepared by the Committee on Legal Affairs and Human Rights and congratulates its rapporteur, Mr Andreas Gross, on his well-documented and thorough work concerning "critically ill"[2] detainees in Europe.

2. The report addresses barriers in access to adequate health care for "critically ill" detainees, including unavailability of trained and independent medical staff in detention centres and prison settings, failure to transfer detainees to a public hospital when needed and disproportionate use of restraints on them in a medical context. However, the fundamental question underlying the rapporteur's mandate relates to the appropriateness of keeping a "critically ill" or dying person in detention at all (i.e. compassionate release).[3] This is reflected in both the draft resolution and the draft recommendation, which put emphasis on the principle that nobody should die in detention. While the standards and processes for compassionate release are typically legal issues in nature and remain thus outside the Social Affairs Committee's remit, access to health care is at the heart of its mandate.

3. Therefore, the Social Affairs Committee wishes to propose some amendments in order to strengthen the draft resolution and the draft recommendation from the perspective of the right to health, in accordance with relevant international standards.

B. Proposed amendments

Amendment A (to the draft resolution)

In paragraph 10.1, replace the words "establish the right to equivalent medical care" with the words "guarantee the right to equal access to health care".

Amendment B (to the draft resolution)

At the end of paragraph 10.4.1, add the words "including when a woman goes into labour".

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1. Reference to committee: Doc. 13573, Reference 4080 of 3 October 2014. Reporting committee: Committee on Legal Affairs and Human Rights. See Doc. 13919. Opinion approved by the committee on 23 November 2015.
2. The report does not define "critically ill" detainees. Its scope is defined as covering detainees suffering from a severe illness, terminally ill detainees and detainees of advanced age (paragraph 7 of the explanatory memorandum). Thus, the title of the report and its intended scope do not match. Indeed, medically speaking, critically ill patients are those patients who are at high risk of actual or potentially life-threatening health problems, and are an entirely different category than terminally ill patients, not to mention patients of advanced age or those suffering from a severe illness who may or may not be critically ill.
3. See paragraph 6 of the explanatory memorandum.

Amendment C (to the draft resolution)

In paragraph 10.4.4, after the words “set up”, insert the word “geriatric,”.

Amendment D (to the draft resolution)

In paragraph 10.4.4, after the words “elderly detainee population”, insert the words “, and terminally and seriously ill detainees”.

Amendment E (to the draft recommendation)

In paragraph 1, replace the words “adequate health care and medical treatment” with the words “access to adequate health care,”.

Amendment F (to the draft recommendation)

In paragraph 2, after the words “in particular”, insert the following words:

> *“the International Covenant on Economic, Social and Cultural Rights, the revised European Social Charter (ETS No. 163)”.*

C. Explanatory memorandum by Mr Schennach, rapporteur for opinion

1. Several international standards establish that people deprived of their liberty shall have access to health care and define the quality of care that should be provided to them. Most of these are legally non-binding instruments and are referred to in the explanatory memorandum. However, their principles all derive from the same fundamental right that is the right to health, first proclaimed by the Constitution of the World Health Organization adopted in 1946, then by the Universal Declaration of Human Rights two years later (Article 25.1). In 1996, Article 12.1 of the United Nations International Covenant on Economic, Social and Cultural Rights enshrined for the first time in a legally binding international instrument “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health”.

2. According to the United Nations Committee of Economic, Cultural and Social Rights, access to health care is a key aspect of the right to health and States are under the obligation to respect this right by, *inter alia*, refraining from denying or limiting equal access for all persons, including prisoners or detainees, minorities, asylum seekers and illegal immigrants, to preventive, curative and palliative health services.[4] It follows that the International Covenant on Economic, Social and Cultural Rights is at the heart of the international standards mentioned above and should be included in the list of key instruments cited in the draft recommendation, together with the revised European Social Charter (ETS No. 163) which is its Council of Europe equivalent[5] (Amendment F).

3. Moreover, the draft resolution and the draft recommendation should follow the appropriate terminology relating to the right to health and thus refer to “the right to equal access to health care” rather than “the right to equivalent medical care”, and to “access to adequate health care” rather than “adequate health care”. In this latter case, there is also no need to add the term “medical treatment” after “health care”, as the former is an aspect of the latter, which is a wider concept that includes diagnostic, preventive, therapeutic and rehabilitative interventions (Amendments A and E).

4. The report only marginally addresses the needs of specific groups of detainees in terms of health care (for example psychological treatment for migrants in immigration detention, see paragraph 38 of the explanatory memorandum). Though understandable in terms of the already very large scope of the report,[6] I think that the case of detainees giving birth deserves particular attention. In fact, while pregnancy is not an illness, labour has considerable risks and can quickly turn into a life-threatening situation. In such cases, special medical care at an outside facility becomes critical and lack of efficient transport may result in the deaths of both the mother and the child. Therefore, in the draft resolution I propose including a specific recommendation on this issue (Amendment B).

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4. General Comment No. 14: the right to the highest attainable standard of health (Article 12), paragraph 34.
5. Article 11 of the revised European Social Charter recognises the right to protection of health.
6. The report covers “all” detainees, including those in pre-trial detention, immigration detention or any other form of detention that is not a result of criminal conviction (see paragraph 3 of the explanatory memorandum).

5. Also in the draft resolution, there seems to be confusion about who should receive palliative and end-of-life care. End-of-life care, which typically includes palliative care, is for patients who are terminally ill. As for palliative care aimed at managing pain and other distressing symptoms of an illness, it should be made available to all seriously ill individuals regardless of prognosis. Hence, while an elderly person can be terminally or seriously ill and require end-of-life or palliative care, to link these two types of care with elderly people, as suggested by the draft resolution, is simply confusing, not to say wrong. If one wants to address the specific problems of elderly people, reference should be made to geriatric care, which is aimed at treating the common geriatric syndromes such as falls, dementia, incontinence and sensory impairments. With a view to clarifying these aspects, I propose to reformulate the relevant paragraph of the draft resolution (Amendments C and D).