

Lawyers' Rights Watch Canada

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Prisoners' Right to Medical Treatment International Law Provisions

By Grace Cheung

Prisoners have a right to receive medical treatment. By arresting and detaining a person, a State takes full responsibility at international law for providing health care to ensure their lives and wellbeing.¹ While prisoners generally do not have a right to choose a specific medical treatment,² international human rights law requires State authorities to provide the most appropriate treatment in accordance with professional medical standards.

I. The United Nations Human Rights System: *International Covenant on Civil and Political Rights*

The International Covenant on Civil and Political Rights (ICCPR) does not expressly provide for a right to health care. However, the United Nations (UN) Human Rights Committee's (HR Committee) position³ is that adequate or appropriate and timely medical care must be provided to all detainees as part of state duties to ensure the enjoyment by all persons of the following rights:

- Article 6 on the right to life,
- Article 7 on the prohibition on torture or cruel, inhuman or degrading treatment and punishment, and
- Article 10 on the right to human treatment of prisoners.

1 Lines, Rick, "The right to health of prisoners in international human rights law," *International Journal of Prisoner Health*, March 2008; 4(1): 3_53, available at http://www.ahrn.net/library_upload/uploadfile/file3102.pdf, citing *Lantsova v. Russian Federation* (26 March 2002) UN Doc CCPR/C/74/763/1997 para 9.2.

2 Van Kempen, Piet Hein, Positive Obligations to Ensure the Human Rights of Prisoners: Safety, Healthcare, Conjugal Visits and the Possibility of Founding a Family under the ICCPR, the ECHR, the ACHR and the AfChHPR (2008), at http://www.internationalpenalandpenitentiaryfoundation.org/Site/documents/Stavern/05_Stavern_Contribution%20Van%20Kempen.pdf.

3 See the following cases: Human Rights Committee 'Concluding Observations: Georgia' (2002) UN Doc A/57/40 vol I 53 para 78(7); *Pinto v. Trinidad and Tobago* (Communication No. 232/1987) Report of the Human Rights Committee vol 2 UN Doc A/45/40 p. 69 para 12.7; *Kelly v. Jamaica* (2 April 1991) UN Doc CCPR/C/41/D/253/1987 para 5.7; Human Rights Committee 'Concluding Observations: Portugal' (2003) UN Doc A/58/40 vol I 56 para 83(11); Human Rights Committee 'Concluding Observations: Cambodia' (1999) UN Doc A/54/40 vol I 57 para 306; Human Rights Committee 'Concluding Observations: Congo' (2000) UN Doc A/55/40 vol I 43 para 282; Human Rights Committee 'Concluding Observations: Mongolia' (2000) UN Doc A/55/40 vol I 49 para 332; Human Rights Committee 'Concluding Observations: Syrian Arab Republic' (2001) UN Doc A/56/40 vol I 70 para 81(13).

The HR Committee has also stated that “the State party by arresting and detaining individuals takes the responsibility to care for their life.”⁴ Further, the State has a duty to be proactive in providing adequate medical care. The HR Committee has stated that it is “incumbent on States to ensure the right of life of detainees, and not incumbent on the latter to request protection.”⁵

This does not necessarily mean that prisoners are free to choose a particular treatment. Authorities are only compelled to provide for the most appropriate treatment in accordance with professional medical standards. In *Fabrikant v. Canada*,⁶ a prisoner wanted to be transferred from Quebec to British Columbia for an angiography. The prisoner said he had a doctor in British Columbia who was willing to perform the surgery. The State argued that the prisoner had been evaluated by twelve Canadian heart specialists who concluded that angioplasty was not appropriate in his case and that he should be treated with a bypass or with medication. The State argued that the ICCPR should not be interpreted as guaranteeing the prisoner the medical treatment of his choice. The prisoner was ultimately transferred to British Columbia and received an angioplasty with the doctor of his choice. The HR Committee affirmed that the State “remains responsible for the life and well-being of its detainees,”⁷ but did not decide the issue; the prisoner’s communication was ruled inadmissible because he did not provide information as to how authorities failed to determine the most appropriate treatment in accordance with professional medical standards.

II. The Inter-American Human Rights System: *American Convention on Human Rights*

The American Convention on Human Rights (ACHR) provides the broadest right to healthcare for prisoners. Article 4 provides the right to life. Article 5 provides the right to humane treatment for prisoners and has been interpreted to include an implied duty on States to provide detainees with regular medical care and adequate treatment. Professor Van Kempen wrote that authorities must facilitate and allow medical assistance to detainees by a physician of their choice but that this does not mean that all of the detainee’s wishes have to be satisfied.⁸

In *Vera Vera v. Ecuador*⁹, the accused had sustained a gunshot to his chest during his arrest. He was not taken immediately to hospital after his arrest and later died of his injuries. The Inter-American Court of Human Rights (IACtHR) reiterated that the State has a negative obligation to respect Article 4 of the ACHR (right to life) and a positive obligation to take the appropriate measures to ensure them in fulfilling its general obligation established in Article 1(1). Since the State is the institution responsible for detention establishments, it is the guarantor of the rights of those under its custody. This implies the State’s duty to guarantee the health and welfare of inmates by providing them, among other things, with required medical care, and it must also ensure that the manner and method of any deprivation of liberty do not exceed the unavoidable level of suffering inherent in detention. The States cannot invoke economic hardships to justify imprisonment conditions that do not comply with minimum international

4 Lantsova v. Russian Federation (26 March 2002) UN Doc CCPR/C/74/763/1997 para 9.2.

5 Lantsova v. Russian Federation (note 129) para 9.2.

6 *Fabrikant v. Canada*, Communication No. 970/2001, U.N. Doc. CCPR/C/79/D/790/2001 (2003), at <http://www1.umn.edu/humanrts/undocs/970-2001.html>

7 *Fabrikant v. Canada* (6 November 2003) UN Doc CCPR/C/79/D/970/2001) para 9.3.

8 Van Kempen, *supra* note 1.

9 *Vera Vera v. Ecuador*, [2011] IACHR at http://www.corteidh.or.cr/docs/casos/articulos/seriec_226_ing.pdf

standards and respect the inherent dignity of the human being. The IACtHR held that the State had violated the prisoner's right to life under Article 4 and right to humane treatment under Article 5.

III. The European Human Rights System: *European Convention on Human Rights*

The European Convention on Human Rights (ECHR) does not expressly provide a right to healthcare. Article 2 on the right to life and Article 3 on the prohibition of inhuman treatment provide a duty on the State to provide adequate medical assistance. There is no general obligation for authorities to release a detainee on health grounds or place him in a civil hospital to obtain a specific treatment. Prisoners do not have a right to choose a particular medical treatment under the ECHR. States are allowed to transfer a prisoner to another facility in order to provide the necessary treatment.

In *Salakhov and Islyamova v. Ukraine*¹⁰, the European Court of Human Rights (ECtHR) held there was a violation to the right to life in a case where a prisoner was refused medical treatment which led to his death. Mr. Salakhov was HIV positive. His health in prison began to deteriorate. He suffered from a constant fever, weight loss and other symptoms. The authorities downplayed his complaints. He was handcuffed to his hospital bed throughout his hospitalization. He was released from prison and died two weeks later. The ECtHR held that the prohibition on torture and cruel, inhuman and degrading treatment imposes an obligation on the State to ensure that the health of a prisoner is adequately secured. The ECtHR found that the failure by the detention centre and hospital to provide Mr. Salakhov with adequate medical care violated his rights. The ECtHR also found that handcuffing Mr. Salakhov during his hospitalization, despite his critical state of health and the fact that he had never behaved violently, also constituted a violation of the ECHR prohibition on cruel, inhuman and degrading treatment. The ECtHR restated its right-to-life case law that a positive obligation of the State arises when it has been established that "the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk. The Court found there was a violation to the right to life in this case.

In *Gulay Cetin v. Turkey*¹¹, the applicant was a prisoner who was diagnosed after imprisonment with metastatic gastric cancer. An oncologist's assessment found her condition was life-threatening and recommended transferring her to a more suitable facility. The authorities refused to move her. The prisoner was unable to carry out everyday activities without assistance. The prisoner's sister was allowed to stay with her in the prison ward to provide her with constant care. The prisoner deteriorated and died when she was transferred to an intensive care unit. The applicant relied on Article 2 (right to life) and alleged that the prison doctor has been responsible for the fatal progression of her cancer. Unfortunately, the ECtHR dismissed this complaint for failure to exhaust domestic remedies as the applicant had not applied to the Turkish administrative courts for a ruling on whether her condition might have been caused by medical negligence. The ECtHR did conclude that her detention amounted

10 *Salakhov and Islyamova v. Ukraine*, [2013] ECHR, Application No. 28005/08, at [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-117134#{"itemid":\["001-117134"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-117134#{)

11 *Gulay Cetin v. Turkey*, [2013] ECHR, Application No. 44084/10 at <http://sim.law.uu.nl/SIM/CaseLaw/Hof.nsf/e4ca7ef017f8c045c1256849004787f5/164d4d9faea32579c1257b21002e2a91?OpenDocument>

to inhuman and degrading treatment in breach of Article 3. Authorities decided to keep her in detention despite the fact that her health had been continually deteriorating. The authorities' actions prevented the application from dying in dignity with her family.

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