



THE RIGHT TO HEALTH

DR. NATALIE ALKIVIADOU

ARTICLE 12, ICESCR



International Covenant on Economic, Social and Cultural Rights

Article 12

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for: (a) The provision for the reduction of the stillbirth rate and of infant mortality and for the healthy development of the child; (b) The improvement of all aspects of environmental and industrial hygiene; (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases; (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

PROGRESSIVE REALISATION



- States parties are required to give effect to these rights within their jurisdictions. More specifically, article 2 (1) of the International Covenant on Economic, Social and Cultural Rights underlines that States have the obligation to progressively achieve the full realization of the rights under the Covenant.
- This is an implicit recognition that States have resource constraints and that it necessarily takes time to implement the treaty provisions.
- Not all aspects of the rights under the Covenant can or may be realized immediately, but at a minimum States must show that they are making every possible effort, within available resources, to better protect and promote all rights under the Covenant.
- Available resources refer to those existing within a State as well as those available from the international community through international cooperation and assistance, as outlined in article 2 (1).

MINIMUM STANDARDS



- The right of access to health facilities, goods and services on a non-discriminatory basis, especially for vulnerable or marginalized groups;
- Access to the minimum essential food which is nutritionally adequate and safe;
- Access to shelter, housing and sanitation and an adequate supply of safe drinking water;
- The provision of essential medicine;
- Equitable distribution of all health facilities, goods and services.

EUROPEAN COURT OF HUMAN RIGHTS



The European Convention on Human Rights does not guarantee a right to health-care or a right to be healthy.

European Social Charter

EUROPEAN COURT OF HUMAN RIGHTS



- Health-related cases brought before the Court have most frequently been argued under Articles 2, 3, 8 and 14 of the Convention.
- Under Article 2 State agents are obliged to refrain from acts or omissions of a life-threatening nature, or which place the health of individuals at grave risk (*İhan v. Turkey*).
- States also have positive obligations under Article 2 to protect the health of individuals in particular circumstances. An issue may thus arise under Article 2 where it is shown that the authorities of a Contracting State have put an individual's life at risk through the denial of health care they have undertaken to make available to the population in general (*Cyprus v. Turkey*, § 219)
- <https://hudoc.echr.coe.int/eng-press#%22itemid%22:%22001-59454%22>

ECTHR – MEDICAL NEGLIGENCE



- Acts and omissions of the authorities in the field of health care may in certain circumstances engage the State's responsibility under the Convention.
- However, where the State has taken adequate steps to secure high standards among health professionals and to protect patients' lives, matters such as an error of judgment on the part of a doctor will not suffice to call it to account from the standpoint of its positive obligations under Article 2 of the Convention to protect life (*Byrzykowski v. Poland*, § 104).

ECTHR – DETAINEES



- In *Vasyukov v. Russia* the Court found that a delay in correctly diagnosing a detainee's tuberculosis had amounted to inhuman and degrading treatment within the meaning of Article 3. In *Paladi v. Moldova* it found a violation of Article 3 on account of the lack of proper medical assistance and the abrupt interruption of neurological treatment that was being administered to a remand detainee.
- In the case of *McGlinchey and Others v. the United Kingdom* a close relative of the applicants died in prison as a consequence of severe heroin withdrawal symptoms. She had suffered serious weight loss and dehydration as a result of a week of largely uncontrolled vomiting and inability to eat or hold down liquids. Having observed several failings by the prison authorities in the provision of adequate medical care, the Court found a violation of Article 3.

ECTHR- DETAINEES



The case of Centre of Legal Resources on behalf of Valentin Câmpeanu v. Romania concerned a young Roma man suffering from severe mental disabilities and HIV infection who had spent his entire life in State care. On reaching adulthood he was eventually placed in a psychiatric hospital which had no facilities to treat HIV and where conditions were known to be appalling, without adequate staff, medication, heating or food. The Grand Chamber found a violation of Article 2 of the Convention on the grounds that the authorities had unreasonably put his life in danger by placing him in the hospital, notwithstanding his heightened state of vulnerability while the medical staff had failed to provide appropriate care and treatment.

NATIONAL LAWS



Constitution of South Africa (1996):

Chapter II, Section 27: Health care, food, water and social security:

“(1) Everyone has the right to have access to

- a. health-care services, including reproductive health care;
- b. sufficient food and water; [...]

(2) The State must take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of each of these rights.

(3) No one may be refused emergency medical treatment.”

DETERMINANTS OF HEALTH



- Safe drinking water and adequate sanitation;
- Safe food;
- Adequate nutrition and housing
- Healthy working and environmental conditions
- Health-related education and information
- Gender equality.

VULNERABLE GROUPS

Example: Migrants

- Major difficulties faced by migrants—particularly undocumented migrants—with respect to their right to health
- Migrants are generally inadequately covered by State health systems and are often unable to afford health insurance.
- Migrant sex workers and undocumented migrants in particular have little access to health and social services
- Migrants have difficulties accessing information on health matters and available services. Often the information is not provided adequately by the State;
- Undocumented migrants dare not access health care for fear that health providers may denounce them to immigration authorities;



VULNERABLE GROUPS



- Female domestic workers are particularly vulnerable to sexual abuse and violence
- Migrant workers often work in unsafe and unhealthy conditions
- Migrant workers may be more prone to their exclusion from major prevention and care programmes on sexually transmitted diseases and HIV/AIDS.
- Conditions in the centres where undocumented migrants are detained may also be conducive to the spread of diseases;
- Trafficked persons are subject to physical violence and abuse, and face formidable hurdles related to their right to reproductive health (sexually transmitted diseases)

Discussion of migrants/refugees in Cyprus COVID-19 strategy

COVID-19

COVID-19 has demonstrated governments' struggle with expanding health care needs

Widespread testing – proving difficult

Protective gear – short supply



STATE OF HEALTH

Neoliberalism:

Dominates global decision-making and manifests in:

- Reduced health spending
- Austerity impacting health
- Privatization of health care

With Covid – economics over health?(Most vulnerable put at risk?)

