

Response

of the Czech Government to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to the Czech Republic

from 21 to 23 October 2009

The Czech Government has requested the publication of this response. The report of the CPT on its October 2009 visit to the Czech Republic is set out in document CPT/Inf (2010) 22.

Strasbourg, 21 July 2010

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Adopted on 21 June 2010 (Government Resolution No 482)

Introduction

After carefully considering the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (the “Committee”) on its visit to the Czech Republic from 21 to 23 October 2009 and the recommendations contained therein, the Government of the Czech Republic provides the following response.

The structure of this response follows that of the Committee’s report and the themes contained therein. The Committee has already had the opportunity to learn about some of the information contained in this response as it was included in a letter of 18 February 2010 from the Czech Republic’s liaison officer to the Committee President.

Access to medical records

recommendation

- **to follow through on the commitment by the Minister of Health to amend Section 67b, paragraph 10 of Act No 20/1966 on health care, and, through this amendment, include the Committee in the list of bodies that have access to medical records without the patient's prior consent. The Committee asks to be informed of the proposed timeframe for the adoption and entry into force of the amendment (paragraph 8);**

The Government is highly appreciative of the work done by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and is prepared, in the spirit of cooperation, to address any issues relating to the full and effective exercise of the Committee's mandate.

The Czech authorities are bound by the provisions of national law and Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms, which protects private life. As stated in the previous Government Observations of 2008, the law does not include the Committee among those authorities who have the right to inspect medical records without the patient's consent. For this reason, and also with regard to Article 8, paragraph 2 (d) of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (the "Convention"), according to which the Committee, in seeking information, shall have regard to applicable rules of national law and professional ethics, the Ministry of Health felt obliged to make the Committee's access to medical records conditional on patient consent.

Following the Committee's visit to the Czech Republic in 2008, the Government sought to change this situation. Provisions intended to facilitate the Committee's access to medical records were part of a package of legislative proposals on healthcare reform submitted to Parliament in 2008. After the proposed healthcare reform failed to receive sufficient support in Parliament, however, in April 2009 the Government was forced to withdraw the entire legislative package from further debate. No further proposals were submitted to Parliament in anticipation of the elections in autumn 2009 (these elections were subsequently postponed until 2010 following a decision by the Constitutional Court).

The issue of access to medical records was then subjected to a thorough interdepartmental analysis also taking into account the status of international treaties in Czech law. Article 10 of the Constitution provides that international treaties are part of Czech law and take precedence over parliamentary acts. With regard to this rule, as well as principles of the interpretation of international law, the Government concluded that Article 8, paragraph 2 of the Convention could be interpreted in a manner allowing the Committee access to medical records without patient consent. The Government remains assured that the Committee, in accordance with the Convention and its rules of procedure, strictly maintains the confidentiality of patient information.

The Government recognizes that the current wording of the law has led to different interpretations by various executive authorities, depending on the extent to which they are familiar with the international law aspects of a complex legal issue. On subsequent visits, it will therefore be ensured that the facilities concerned are properly informed of the duty to grant the Committee unrestricted access to medical records.

The Government also remains committed to seeking the adoption of legislative amendments designed to clarify existing legislation and to avoid the risk that legitimate concerns about the privacy of patients could be an obstacle to the exercise of the Committee's mandate. To this end, a draft amendment to Act No 20/1966 on health care classifying the Committee among entities entitled to access medical records without patient consent is now the subject of interdepartmental consultations. Once its final form has been settled, it will be submitted to the Government for approval. The new Parliament formed after the elections in May 2010 will be in a position to debate the draft amendment. In view of legislative time limits, the amendment, if adopted, can be expected to enter into force in 2011.

Treatment of sex offenders

recommendation

- **the Committee calls for an immediate end to the application of surgical castration in the context of the treatment of sex offenders; pending its abolition, a moratorium on its application should be imposed without delay (paragraph 10);**

The Government does not share the Committee's view that surgical castration of sex offenders who have been deprived of their liberty is tantamount to degrading treatment. According to the case-law of the European Court of Human Rights, treatment which grossly humiliates a person before others or drives him to act against his will and conscience is regarded as degrading treatment; degrading treatment also includes conduct which is intended to arouse in the victim feelings of fear, anguish and inferiority, even where the absence of any pursuit of this goal cannot inherently exclude the degrading nature of the treatment, and which is capable of humiliating, degrading and possibly breaking down the physical or moral resistance of the victim. For such treatment to be regarded as degrading, it must also attain a certain minimum level of severity, which is assessed according to all the circumstances of the case in question.

Surgery performed at the request of a patient who has been fully informed of the nature and consequences of the operation cannot be considered treatment with the above characteristics. Surgical castration is a medical procedure used either in patients with cancer or in patients suffering from a paraphilia. In the latter case, i.e. in the context of treating sex offenders, it is a measure which facilitates the reintegration of the people concerned into society, and therefore it can hardly be seen as degrading treatment.

The Government, in the light of the Committee's previous recommendations, is seeking to strengthen the existing legal guarantees ensuring informed consent and to create more detailed regulation of the procedure for surgical castration. The relevant bills were submitted to Parliament as part of the package of legislative proposals on healthcare reform. As mentioned above, because the reform did not receive sufficient support in Parliament, in 2009 the Government had to withdraw the entire legislative package from further debate. The Government formed after the elections held in May 2010 will be able to submit further legislative proposals.

After this legislative process was suspended, the Ministry of Health published in its Journal more detailed recommended procedure for surgical castration in March 2010.

More detailed information on surgical castration and the relevant legislation is set out below.

1. Nature of the medical procedure

The purpose of the surgical castration of sex offenders is to prevent or reduce the risk of sexually motivated crime by men who suffer from socially dangerous forms of sexual deviance. Ethically and medically correct surgical castration and subsequent compliance with the prescribed medical follow up by a surgically castrated person can result in the effective protection of society and give that person the chance to return to society. Surgical castration achieves a significant and lifelong decline in the sexual activity of a man; this goal cannot be achieved by other means.

If statutory requirements are met and the health of the man in question permits, surgical castration is carried out especially in cases where socially dangerous paraphilias are present, either those associated with aggressive behaviour towards a subject (sadism and pathological sexual aggression) or those where prepubescent children are the preferred subject (paedophilia). It is indicated in those cases where a man commits the relevant sexual offence repeatedly, or shows clear tendencies towards a relapse of particularly serious paraphiliac behaviour despite undergoing less intrusive treatment (psychotherapy, drug therapy).

An alternative to surgical castration is medication (anti-androgens or gonadoliberin analogues) which has the pharmacological effect of reducing the level of sex hormones and/or blocking their activation in target tissues. The attenuation of sexuality achieved by such treatment is not permanent and depends on the regular administration of drugs, which can be very difficult and depends on how cooperative the patient is with the doctor. This treatment is not ideal either because of the possible side effects: weight gain, fatigue, nausea, high blood pressure, depression, hypoglycaemia, changes in liver enzymes, and (rarely) gynaecomastia. For these reasons, such treatment with drugs can not be offered to some patients.

If a patient rejects all of the above treatment options, the only other alternatives are placement of the offender in a psychiatric hospital or in a detention facility subject to protective measures imposed by a court.

Since surgical castration has been used to treat sex offenders in the Czech Republic, the Government has not registered any complaints about this practice from the patients who have undergone such surgery. On the contrary, the patients themselves often seek out and select this method of treatment. The Sexology Society of the Czech Medical Association considers castration to be one of the therapies that can be used to effectively and permanently reduce a man's sexual activity.

2. Legislation

Surgical castration is performed always and only upon the request of an adult patient and after approval by an expert committee, which consists of a lawyer, at least two physicians specializing in the relevant field, and two other doctors not involved in the surgical operation (Section 27a of Act No 20/1966).

The law also requires a physician or other healthcare professional to inform the patient about the purpose and nature of the health care to be provided and of all diagnostic or therapeutic procedures, including their consequences, alternatives and risks.¹ Patient consent is required for each diagnostic and therapeutic procedure.

More detailed provisions on informed consent, intended to strengthen existing guarantees, were included in the healthcare bill which the Government withdrew from debate in the Chamber of Deputies in 2009 (see the explanation above).

Although new, more detailed regulation has yet to be adopted, the requirement of free, qualified and informed consent is also provided for in Article 5 of the Convention on Human Rights and Biomedicine, which is part of Czech law. If any procedure established by a law or a by-law is inconsistent with the requirements of the Convention, the provisions of the Convention take precedence.

The particulars of a patient's informed consent, as well as the particulars of a statement refusing a medical procedure, are currently governed by Decree No 385/2006 on medical records, which specifies in detail all the information that must be included in a written informed consent or in a statement refusing a medical procedure.²

The basic rules laid down by national law for the requirement of informed consent are maintained, and patients who request a testicular pulpectomy have been provided with all required and necessary information regarding the surgery, are aware of its consequences and effects, and may change their mind at any time before the operation.

The bill on specific health services included more detailed provisions on the surgical castration of patients who are deprived of their liberty (i.e. those in custody, in prison, who receive protective treatment or are in protective detention) and patients who are deprived of legal capacity. However, this bill had to be withdrawn from further debate in Parliament (see the explanation above).

After it became clear that more detailed regulation could not, for the time being, be approved in the form of an act, these provisions were published in March 2010 as a recommended procedure in Ministry of Health Journal No 1/2010 in a bid to unify the practices of medical facilities. The "Recommended Procedure for Surgical Castration in Relation to Sexual Offences Motivated by Paraphilias" was prepared by the Ministry of Health in collaboration with the Sexology Society of the Czech Medical Association.

The Recommended Procedure defines what is meant by the term "surgical castration" and provides information about its purpose and the conditions under which it is performed. Surgical castration is a possibility for patients who, due to a medically certified inclination to commit violent sexual offences, are a danger to others or who suffer from sexually deviant tendencies seriously endangering the health or life of other persons, and with regard to whom other treatment options have been exhausted and the statutory requirements have been met. The Recommended Procedure states the possible contraindications ruling out the operation. It also mentions possible alternatives to this procedure, i.e. medication (anti-androgens or gonadoliberin analogues), as well as the side effects of castration. The Recommended Procedure sets out the procedure leading up to castration (written request by the patient and approval by an expert committee), the required elements of a request, and the composition of the expert committee (the doctor who recommended the operation

¹ Act No 20/1966 on health care, as amended, Section 23(1)

² Annex 1 to the Decree

cannot be a member of the committee). Prior to the submission of the patient's request to the expert committee, a high probability of the perpetration of a violent sexual offence or danger of a sexually deviant inclination should be confirmed by two independent medical reports. The patient should be duly advised; the expert committee should invite him to a meeting to verify that he has been informed about castration, its consequences and risks, and that he understands the procedure and its ramifications, and agrees to the performance of the operation, and to inform him of its opinion on his case. The medical facility should keep records of applications for castration and of the castrations performed.

3. Conclusion

Although the Government cannot concur with the Committee's opinion that the surgical castration of sex offenders who are deprived of their liberty is tantamount to degrading treatment, it remains prepared, in the spirit of cooperation, to consider the Committee's recommendations and comments in this matter. Nevertheless, it is of the opinion that this is a complex issue involving many legal, medical and ethical aspects and requires thorough multidisciplinary evaluation in the form of a discussion involving all stakeholders at national level.

The Government therefore welcomes the fact that the issue of surgical castration has started to be discussed by the specialized committees of the Government Council for Human Rights, a government advisory body consisting of representatives of central government bodies, civil society and the professional community. Discussions on this subject are progressing, with the participation of invited experts, within the Committee against Torture and Other Inhuman, Cruel, Degrading Treatment and Punishment and the Committee on Human Rights and Biomedicine.

Further consideration of this matter by the Government and its advisory bodies should be assisted by a new expert study, to be prepared, at the request of the Government, by the Ministry of Health in collaboration with the Government Commissioner for Human Rights. Besides the medical, ethical and legal aspects, the study should also include a comparison of the advantages and disadvantages of possible alternative methods in the treatment of sex offenders and information about the methods used to treat sex offenders in other countries.

With regard to the Committee's call to introduce a moratorium on the use of surgical castration in treatment of sex offenders, the Government cannot intervene in procedure prescribed by law, i.e. suspend the work of expert committees deciding on individual applications, or annul their decisions and cancel the related medical procedure. This conclusion is confirmed by the discussions of the working bodies of the Government Council for Human Rights.

The Government is prepared to revisit surgical castration in treatment of sex offenders in light of the conclusions reached following debate by its advisory bodies.