The European Court of Human Rights: a tool for improving prison health

The *Lancet* Commission on the Legal Determinants of Health[1] articulated well the crucial role that law can have in advancing public health, and highlighted the fact that "it remains substantially underutilised and poorly understood". This Comment aims to shed some light on the European Court of Human Rights, a legal body that has been, and can continue to be, instrumental in improving the health of prison populations in Europe.

The European Court of Human Rights is based in Strasbourg, France, and interprets the European Convention on Human Rights, a binding international treaty ratified by all 47 member states of the Council of Europe, including the UK. Although the Convention does not guarantee a specific right to health or a right to health care, people in detention have been applying to the European Court of Human Rights since its inception with complaints relating to issues of overcrowding, poor conditions, absence of facilities, violence, and poor medical care. These cases are generally considered under Article 3 of the European Convention on Human Rights: the prohibition of torture and inhuman or degrading treatment or punishment. However, cases in which the imprisoned person has died can also be dealt with under Article 2: the right to life.

Under Article 3, the European Court of Human Rights has recognised that because people in prison are almost totally dependent on the authorities, states are under a general obligation to protect their physical wellbeing. From this general obligation, the European Court of Human Rights has defined a number of specific positive obligations with respect to people in prison. These positive obligations include the duty to provide equivalent health services and timely, requisite medical assistance; to comply with very stringent limitations on the use of force feeding; to provide a general right to hygienic living conditions, including access to proper toilet or washing facilities, clean and adequate bedding and clothing, and access to reasonable quality food and water in sufficient amounts.[2]

This is not to say that the European Court of Human Rights is a panacea. The application process is lengthy, complicated, and not always available to people in prison, and the individual justice model is not necessarily suited to population-wide interventions. The influence of the European Court of Human Rights' judgments is limited, although far from unsubstantial. Substantial reforms have resulted from the recognition of the rights of people in prison in matters such as release, formal discipline procedures, and communications with the outside world. However, the more complex, demanding, and costly the remedial measures the European Court of Human Rights demands, the more difficulty it has had in the implementation of its judgments. Tackling overcrowding, for example, is a key issue in improving public health in prisons, yet this problem persists despite the Court's repeated findings of violations in this respect in prisons across Europe.[3]

That said, the European Court of Human Rights is an important lever for improving public health in prisons, and the level of protection afforded is not static. Until 1998, the Court only very rarely found that conditions of detention amounted to a violation of Convention rights, doing little more than legitimising state practices.[4] However, since 1998, findings of violations have substantially increased.[5,6] In future, as more is understood about the negative effects of overcrowding on mental and physical health, could the European Court of Human Rights require states to justify the use of imprisonment for less serious offences when space is scarce and risks are high?

The dynamics driving the evolution of the European Court of Human Rights' protection are many and complex, but these dynamics are important in understanding how the European Convention on Human Rights can be used as a tool to improve prison health. In 1998, the system was restructured into one single, permanent, full-time court, and individuals were given direct access to apply to it (previously, states would decide whether to allow their citizens this right). Additionally, the Council of Europe's enlargement to the east resulted not only in a geographic shift in applications, but also a substantive change: new types of human rights questions started to come before the European Court of Human Rights, particularly an increasing number of Article 3 challenges to prison conditions in countries such as Russia and Ukraine,

where difficulties of overcrowding and poor health-care conditions were well known.

These factors combine first with the doctrine that the Convention is to be interpreted on the basis of present conditions, so as to keep the protection of the European Court of Human Rights contemporary, practical, and effective; second, with the concept of European consensus, where the Court can use an emerging consensus on standards across Europe to impose that standard on other member states; and last, with the Court's increasing reliance on external sources to supplement its reasoning. Indeed, the European Court of Human Rights has relied on WHO guidelines, for example, to establish minimum standards relating to tuberculosis programmes in prisons,[7] and uses reports and standards from the Committee for the Prevention of Torture[8] to gradually increase its understanding of the effects of detention on the health of people in prison. All of this results in increases in the level of protection of prisoner health.

The European Convention on Human Rights is therefore a powerful lever to affect and improve prison conditions and the health of people in prisons. The level of protection granted is contingent on many factors, including judges' understanding of the effects of poor conditions on the health of people in prison, and can be improved by strategic thinking and litigation. Effective and dynamic dialogue between the public health and the human rights communities is thus crucial.

I declare no competing interests.

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