Hunger strike and force-feeding in Switzerland: How to resist unethical orders?

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I do not have any relevant financial relationships with any commercial interests
Outline

- The Swiss hunger striker
- Important in the management of hunger strikers
- National coordination and action
- Lessons for Guantanamo?
Incarceration in Switzerland

- General population: 8 Mio
- 109 prisons: 83 detainees /100’000 habitants
- Women (%): 4.9
- Foreigners (%): 73.8
- Young, <18y (%): 0.8

Prison population (per 100,000 people)
Hunger strike in Geneva

Epidemiology

• An average of 17.2 cases of protest fast by year in Geneva’s main prison

• No cases of fasting leading to unconsciousness or death
THE SWISS CASE
2010
The patient and the court

• Patient (57 y), 5 tons of cannabis
• Sentence 5 y 7 months in Valais, Switzerland
• Hunger strike (several periods since February 2010)
  – Wants to interrupt the sentence because too fragile (medical reasons)
    → regional court → cantonal court → federal court
• Federal court 26.8.2010
  – Reject of interruption of the sentence
  – “If needed the authorities might order forced nutrition” (with respect of “deontological rules” and “respect of the dignity”)
Hunger strike in prison: Important

- Careful assessment of the decision-making capacity
- Gaining the trust of the patient and the respect of the (penitentiary or judicial) authorities
- Equivalence of care between free patients and prisoners
- Confidentiality, Autonomy and medical secrecy
- Quality: medical expertise
- Principle of professional independence

WMA Malta declaration 2006
Council of Europe, CPT 2013
Getaz, Swiss Med Weekly 2012
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La médecine, les médecins et les juges...

Consensus of all medical authorities:
• Swiss Medical Federation
• National Academy of Medical Sciences
• Central Ethics Committee
• Swiss Nurses Association
• Swiss Conference of Medical Doctors
CPT standards

1. Access to a doctor
2. Equivalence of care
3. Patient's consent and confidentiality
4. Preventive health care
5. Humanitarian assistance
6. Professional independence
7. Professional competence

Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Council of Europe

European convention for the prevention of torture and inhuman or degrading treatment or punishment, November 26, 1987

- Independent experts
- Visits, inspections
- Reports / recommendations (high political and administrative level: government )
- Cooperation (≠ judiciary organ )
The patient, the penitentiary authorities and the court

- 21.10.2010: Hospitalization at the Geneva University Hospital (Prison unit)

→ «Order» to force-feed (by prison authorities to the doctor)

→ «Order» to force-feed (Cantonal Court to the doctor)
Force feeding: Doctor says NO...

1. Order invalid (independence)
2. No medical expertise of the Court
3. Contrary to the cantonal laws of GE and VS
4. Respect of advance directives of a patient with intact decision-making capacity
5. Unconstitutional as violating a fundamental right (autonomy)
6. Significant risk of morbidity and mortality
7. Inconsistent with the orders of his superiors
8. Contrary to the rules of medical ethics
Jugement Federal Court

.... Epilogue Valais

• Judgement federal court 2’2011: important question, necessary to clarify, but,….could be done later

• Epilogue canton Valais 11’2011:
  – Radical change (180°) in management of hunger strikers in prison: no force feeding will be admitted for a detainee on hunger strike who has his decision-making capacity, even if the detainee is at risk of death
Ethics

- **Decision making capacity:**
  - Evaluated with respect to a choice at a given time and
  - Present or absent
  - Evaluated on the basis of the decision and not on the basis of the result (this is a skill!)

- **Conflict between the obligation of the state authority towards detainee and on the other side the right to self-determination (autonomy) of the detainee**

- **Role of the prison doctor:** at the service of the state authority, even if medical action is detrimental to his patient?

- **Dual loyalty**

  Pont, Am J Public Health 2012
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Why did it work?
(To resist a court order to force feed a hunger striker)

• Alignment of the position of ALL medical stakeholders: respect of 7 fundamental principles (CPT)
  – Mainly: patient's consent and confidentiality, professional independence

• Environment to build a good patient-doctor relationship: trust, respect, confidentiality, consent, access and continuity of care

• European Court of Human Rights: Force-feeding=torture
  – Possible to overrule the Swiss federal court
  
• Powerful position: largest Swiss Hospital
  – 11’000 employees), 6 lawyers, academic environment,...

NEVMERJITSKI vs. UKRAINE, ECHR 2005
Lessons for Guantanamo?

• Needs for an American CPT (Committee of Prevention of Torture)

• Parallel systems (« ethical black boxes »):
  – Guantanamo (not on American soil, no charge, no trial, no American law applicable)
  – Sanctions for (military) doctors who violate “the code of medical ethics (AMA)
    (force feeding, participation in torture,...)
  – Re-think health care in prison
Essential
Respect
Trust
Dignity
Security
Thank you for your attention
Force feeding?

UK 1913:
Suffragettes

Source: www.art.com

Source: suffragettes.nls.uk/sources/source-32
Guantanamo restraint chair used for enteral feeding. Guantanamo captives were subjected to involuntary force-feeding when they had skipped nine consecutive meals.

Source: commons.wikimedia.org
Complications forced feeding

- Esophageal or gastric perforation
- Physical and / or mental trauma
- Infections
- Bowel perforation, and fistulae
- Refeeding syndrome

Mehanna, BMJ 2008
Crosby Ann Int Med 2012
Nicholsen J Gastroenterol Hepatol 2000
Force-feeding in Spain

- Force-feeding by decision of justice
- One doctor (Dr Munoz) who participated in force-feeding was murdered in 1990

José Manuel Sevillano Martin, force-fed, before dying at Hospital Gregorio Marañón (Madrid) (Source: www.elmundo.es).