OSABIDEAK
ASKATASUNAZ GABETUTAKO PERTSONEN OSASUN ESKUBIDEEN ALDEKO, SENDAGILE ETA LEGEGILEEN EUSKAL HERRIKO ELKARTEA
ASOCIACIÓN VASCA DE PROFESIONALES DE LA MEDICINA Y JURISTAS EN DEFENSA DEL DERECHO A LA SALUD DE LAS PERSONAS PRIVADAS DE LIBERTAD

Osabideak, the multidisciplinary association of doctors and legal experts in defence of the right to health of people deprived of their liberty has launched a campaign to denounce the medical and legal treatment suffered by seriously ill people who are deprived of their liberty. This is the reason why we have begun a campaign to demand the derogation of the Instruction 3/2017 of the Prison Authorities in Spain which aims to limit the length of time in liberty of terminally-ill prisoners by imposing strict time criteria. We have made a request for support from professionally qualified people who are directly involved and have a responsibility for the right to health as well as from civil rights groups which will support the general public`s demand for the derogation.

Having to suffer a serious or incurable illness or several illnesses which force you to live with different physical or psychological symptoms of pain and disabilities, with the additional fear and worry of an early death, is one of the hardest experiences you can have. In such situations of exceptional vulnerability, if there is no help or sufficient medical and civil support the person could well feel that his very dignity as a human being has been eroded. That`s why there is a real need for the different institutions in the state to legislate on the right to a dignified death.

Deaths that are related to illnesses that are in an advanced stage and are incurable, and as such are inevitable in a prison, should be considered as a failure on the part of the prison authorities, the judicial system, the prison medical services and indeed of society as a whole.

Termination of life in a situation of vulnerability and frailty due to advanced and incurable illnesses, and the actual death itself in a prison where the patient is deprived of freedom with neither an adequate and necessary palliative care, with the restrictions as a consequence of being in prison being added to those which the illness itself causes (situations of loneliness through being deprived of the support of family and friends) is not only cruel and disgraceful but is also contrary to the values that are an essential part of human dignity.

In order to protect respect for human dignity, the present penal law code establishes the possibility of freeing prisoners or implementing alternative means which do not entail imprisonment but which offer safeguards regarding security measures (for people older than seventy and seriously ill people where the illness is in an advanced and incurable stage and where there is imminent danger of dying). As well as that, it should be remembered that the general Health Law and Article 14 of the constitution include the right to health for everybody in equal conditions, including prisoners, and as such guarantees the right to health care equivalent to what one could expect in one`s own community, regardless of the legal situation one finds oneself in. The Committee for the prevention of torture and degrading and inhumane treatment or sentences of the European Council in its report in 2011 considers that inadequate medical assistance can soon lead to situations that can be considered as degrading or inhuman treatment. The UN and WHO both recommend that active measures be taken to guarantee equality in health care and/or allow for alternative measures to be considered as opposed to imprisonment in those cases where this cannot be guaranteed.

However, the statistics regarding prison deaths show that these laws are neither fulfilled by the justice department nor by prison medical authorities.

Especially worrying is the persistence of the Prison Authorities in dehumanizing even more the situation of sick prisoners by denying them the dignity befitting people suffering serious and incurable illnesses. Even those who fulfill the criteria of terminal illness as defined in the legal document attached which includes the "ad-hoc" objective of limiting the time that a terminal patient can spend in liberty by demanding a medical assessment to establish the extent of imminent danger for the life of a patient, defining this (the imminent danger) as that situation of terminal illness where death is almost certainly foreseeable in a short period of time. This time period has since been defined as 2 months by the Minister of the Interior, Juan Ignacio Zoido, in his regrettable parliamentary reply, bereft as it was of any scientific or human logic.

The guidelines of this ministry are contrary to those established by the UN and WHO which recommend in their guidelines to Prison and Judicial Authorities the freeing of people having illnesses which are classified as terminal for the following two reasons: as a humanitarian or compassionate measure which allows them to face death with dignity surrounded by friends and family and secondly as a way of prolonging life expectancy by allowing the prisoner to receive adequate care in their community.

In order to assess and define what serious or clear risks to life are and to specify the terminal phase and make predictions about it, is presently the subject of intense debate by the main medical and scientific groups in the area of palliative care, people who have the ability to make judgements based on medical knowledge, rather than on legal concerns or that of the prison authorities. Imminent danger means involving an obvious risk to the life of the patient from one or more illnesses whose evolution put at risk the life of a patient and goes further than just fulfilling terminally ill criteria. As well as that, it`s important to remember that the law does not demand that a patient fulfill criteria corresponding to the terminally ill in order to allow them to be freed or for alternative or more flexible measures to be used. That`s why we believe that it`s not up to a government administration like the Prison Authorities to define what "imminent danger" to life entails and even less so to limit this to strict criteria of time.

The way in which the Prison Authorities has used the Instruction 3/2017 to define "imminent danger" as possibility of death "in a very short period of time" represents a violation of the legal hierarchy as well as that of the principle of Organic Law. The instructions are, as their name suggests, instruments to order questions of internal intendance in a specific administrative area. Numerous have been the times that the administration has used this illegal instrument to impose whatever policies it deems suitable with a total lack of respect for the principle of legality (See the instructions 2/2004, 4/2015, 12/2011, 1/2012)

Article 9 of the Spanish constitution guarantees the principle of legal hierarchy. The instruction is null and void, and as such, unacceptable due to the effects that it produces and for not respecting this principle given that it is concerned with the core of constitutional of fundamental Rights as contained in Article 15 of the CE regarding life, physical and moral integrity, and prohibition of torture, inhuman and degrading treatment. The law regulates spaces for those who, far from being habilitated, enjoy the guarantee of legal reservation, Organic Law. The consequence is an administrative act, lacking any trace of legality.

Due to the scarcity of means of making a reliable medical prognosis and clearly proven inaccuracies in the subjective judgements of the doctors, all the scientific palliative associations (SECPAL, EAPC) have discarded the time criteria for the definition of terminal illness. The estimated time scale for a terminal illness is variable because there coexist multiple factors: age, concurrent illnesses, response to treatment, the appearance of serious

complications in certain types of illnesses, the secondary effects of the treatment.etc. mean that the same sickness evolves in a different way depending on the patient so it`s more appropriate to talk of patients rather than sicknesses. Medical and technological advances are helping to prolong life expectancy in patients in the advanced stages of cancer (metastasis). However, in this type of situation a lot of care is needed to maintain a good quality of life and such care is extremely hard to get in prisons, detention centres and similar centres due to the internal rule restrictions. The only methods used to make a prognosis can only offer guidelines in establishing possible time scales and the scientific advances and such medical resources as there are should never be used to the detriment of the patient. Both bioethics and the law stipulate that they should always be used in a way that respects the dignity and fundamental human rights of the patient.

As professionals, we are in a position to see that due to the aforementioned instruction the Prison Authorities are interfering in the professional work of the doctors in the prison service, not to mention the consequences for the medical code of ethics. The prison authorities shouldn`t issue an instruction on health matters to its prison medical staff and in general to the whole scientific medical community which is involved in some way in these cases (forensic teams, experts and medical specialists) as it makes them do something which is not required either on legal or medical grounds. The scientific evidence and experience shows us that such interference and the eroding of the independence of medical professionals paves the way for the violation of rights and fundamental guarantees, encourages its impunity and demeans the medical profession. An example of this is the inefficiency of non-independent doctors (administratively) in the case of ill treatment and torture in places where they have have been deprived of their liberty (young offenders centres, prisons, detention centres and police stations). The independence of the medical profession is of vital importance as a way of guaranteeing the right to health and as such is recommended by human rights groups. Similarly the Spanish Society for Prison Health Care and the Medical School Organization have continuously denounced the serious flaws and discriminations in prison medical care and have denounced the fact that this administrative compliance and this mediatized assistance violate the ethical code, the deontological code and interfere in doctor-patient relations.

The medical ethical code says in article 36 in reference to terminal medical care that the doctor shouldn`t embark on or continue diagnostic actions which have no hope of bringing benefits to the patient. Medical professionals shouldn`t have to take on the role of police officer or act as some sort of health security guard carrying out medical and diagnostic tests on terminally-ill patients to assess the minimum period of time a patient is going to live, in compliance with the demands of the prison administration. To assess the period of time a patient will live merealy for administrative purposes rather than for the purpose of administering palliative care is inhuman and degrading and contradicts the aforementioned article 36 of the Code of Ethics. Article 15 of the CE prohibits it and article 5 on the general principles of the ethical code states that the medical profession is at the service of the human being, to respect the life and dignity of the person and care for their health.

Medical staff who empathize, treat and work on a day-to-day basis with seriously-ill patients in an advanced state of their illness, patients with incurable illnesses, severely-handicapped patients which have little prospect of improvement in their condition know only too well what suffering is involved in these situations. Being forced to be kept in prison under such circumstances is an unjustified punishment with no other social objective than that of punishing and looking for reprisal. The normal aim of a sentence involves reinsertion of the prisoner, as made clear in article 25 of the Ethical Code, but this is neglected in favour of a sentence which has more to with revenge motives, motives which are proscribed in the present penal system.

Neither the health service nor the judicial system should allow patients to remain in prison if they have cancer in an advanced stage (metastasis), or if they suffer from a neurodegenerative illness which leaves them seriously discapacitated and which has no prospect of improvement or if they are pluri pathological patients with a risk of early death. When it is precisely the Government administrations themselves that, contrary to all judicial guarantees, are responsible for violating human rights and human dignity rather than guaranteeing them, it is our social and professional responsibility to question the legitimacy of these administrations. That`s why we call on legal and medical professionals to stand up against these abuses.

The association Osabideak calls for the professional and administrative independence of doctors (Medical Assistance and forensic teams) who depend on the judicial administration and institutions, the ones who are responsible for depriving the patients of their liberty (prisons, detention centres...). We defend the standardization and protocolization of medical reports with an aim to assessing what illnesses necessitate treatment that is incompatible with deprivation of liberty. This should also apply to those that assess the principle of medical equivalence as well as that of carrying out assessment scales and barometers that have been agreed with the competent medical authorities treating these illnesses (severity, chronicity, risks, prognosis, disabilities) in order to facilitate an external monitoring and expert assessment and minimize arbitrary measures and discriminations. It is for all these reasons that we demand the derogation of the Prison Instruction 3/3017.