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THE PROTECTION OF MIGRANTS' HEALTH

International, European and Human Rights Perspectives

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A QUESTION THAT MANY PEOPLE ASK

“Can we really afford to treat everyone?”

Scarcity of resources and pressure on healthcare systems

does the right to health belong only to citizens?
or does it belong to the person as a human being?

The relationship between citizenship and social rights

The tension between migration control and human dignity

THE RIGHT TO HEALTH AS A HUMAN RIGHT

After WWII:
Health belongs to every person, not only to citizens

this does not mean that every person
has a right to any imaginable healthcare service
without limits or conditions

But minimum core obligations cannot be denied

Universal Declaration of Human Rights (1948), Article 25
everyone has the right to a standard of living adequate
for health and well-being,
including medical care and essential social services

ICESCR (1966), Article 12
recognises the right of everyone
to the highest attainable standard of physical and mental health

HEALTH AND NON-DISCRIMINATION

Protection regardless of nationality or migration status

States may regulate immigration

International Law does not ignore that State may have limited resources

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but it cannot decide that some people
are completely excluded from healthcare protection
simply because they are aliens or because they are irregularly present

Healthcare cannot become a punishment or an instrument of exclusion

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Minimum threshold of protection that must be guaranteed to everyone without discrimination based on nationality, ethnic origin, migration status (UN Committee ESCR)

IRREGULAR MIGRANTS AND HEALTHCARE

What concretely happens in the Italian system?

- Foreigners legally residing in Italy
- Applicants for internat. protection

} National Health Service

The STP code: 'Temporarily Present Foreigner'

Access to urgent and essential care
Protection during pregnancy and maternity,
Vaccinations and infectious disease treatment

No automatic police reporting

HEALTH AS A LIMIT TO EXPULSION

HEALTH CONDITIONS MAY LIMIT THE STATE'S RIGHT TO EXPEL FOREIGN NATIONALS.
Expulsion may violate:

Article 3 ECHR *(no one shall be subjected to torture, inhuman or degrading treatment)*
Article 8 ECHR *(everyone has the right to respect for his private and family life)*

Paposhvili v. Belgium (ECtHR, 13.12.2016, appl. no. 41738/10)

violation of Article 3 ECHR
the applicant had been removed to Georgia without the Belgian authorities having assessed the risk faced in the light of his state of health
and the existence of appropriate treatment in Georgia

(diagnosed with chronic lymphocytic leukaemia in Binet stage B
with a very high level of CD38 expression)

violation of Article 8 ECHR
the applicant had been removed to Georgia without the Belgian authorities having assessed the impact of removal on the applicant's right to respect for his family life in view of his state of health
Special protection and medical treatment permits

ARRIVAL, SCREENING AND VULNERABILITY

What concretely happens when migrants arrive on Italian territory?

Rescue at sea and emergency care

Role of USMAF offices - the purpose is twofold:
- to identify possible risks to public health
- to identify situations of individual vulnerability

Invisible vulnerabilities: torture, trauma, trafficking

Vulnerability requires time, trust and specialised staff

HOTSPOTS

After arrival, many people pass through hotspots

Identification and first reception

Health screening and vulnerability assessment

Main problems: overcrowding, hygiene, prolonged stays

Lampedusa as a symbolic example

THE EUROPEAN COURT OF HUMAN RIGHTS

J.A. and Others v. Italy (30 March 2023)

ECtHR addressed the conditions in the Lampedusa hotspot highlighting problems relating to material conditions, restriction of personal liberty, and protection of human dignity

Health protection depends also on living conditions

A person may be formally assisted,
but if he or she lives in degrading, overcrowded,
and unhygienic conditions,
dignity and health are nevertheless compromised

CPRs: PRE-REMOVAL DETENTION CENTRES

Administrative detention facilities - places of administrative detention intended for people who are to be removed

Strong dependence on the administration

Mental health and continuity of care

Self-harm, psychiatric fragility and isolation

THE PROBLEM OF MEDICAL ASSESSMENT

Before entering a CPR, the person should undergo a medical examination.
The health authority - assessment of fitness for life in a restricted community

But fitness for detention is often evaluated formally

Abstract fitness ≠ concrete compatibility

Need for independent medical assessment - The real compatibility is often assessed only internally, by the doctor working in the facility. But he/she is often employed by the private entity managing the CPR...

Delays in specialist care – PROBLEM: the actual capacity of the system to connect with the National Health Service.

THE ITALY–ALBANIA PROTOCOL

Problems are exacerbated when the centres
are located outside the national territory

centres established under the 2023 Italy-Albania Protocol

Italy exercises jurisdiction over such centres
Italy is required to comply with Italian law and EU law

**BUT: can effective safeguards be ensured -
including from a healthcare perspective - for those held in such centres?**

Accelerated border procedures outside Italian territory
Very rapid screening procedures
Risk of overlooking vulnerabilities
Tension between speed and effective rights protection

HEALTH DEPENDS ON CONTEXT

Health is not only about doctors and medicines

Overcrowding, uncertainty and isolation matter

Detention conditions may produce psychological suffering

Human dignity remains the key legal principle

FINAL REFLECTIONS

Border control does not suspend fundamental rights

Scarcity of resources does not eliminate human dignity

Minimum healthcare protection cannot be denied

The treatment of vulnerable migrants tests the rule of law