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Medical ethics in the forced return of migrants

MEDICAL ETHICS

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The Abassi case put a spotlight on the role of doctors in forced returns. The role of doctors, their understanding of this role and their professional ethics are all challenged.

The Norwegian Directorate of Immigration can make a decision to forcibly return a migrant who does not have legal residence in Norway and refuses to leave the country voluntarily. This is administered by the National Police Immigration Service (NPIS) under the provisions of Section 90 of the Immigration Act (1). The Council for Medical Ethics has received complaints and enquiries from the press about the ethical aspects of doctors' involvement in forced returns. The topic will be elucidated in this article, which is based on cases processed by the Council for Medical Ethics, the Council's meeting with the provider of medical services to the NPIS (September 2019) and the Council chair's visit to the National Police Immigration Detention Centre (NPIDC) at Trandum (December 2019). The article is also based on tender documents from the NPIS that we have been given access to.

Laws, regulations and reports use various terms for migrants who do not have legal residence, including *foreigner*, *immigrant*, *internee* and *detainee*. In this article, we use the term *migrant*.

Forced returns and the need for medical services

A forced return consists of four phases: arrest, internment at the NPIDC, preparation for deportation, and deportation. In all phases of a forced return, a need may arise for health services, including medical care.

Arrest

Arrests under Section 106 of the Immigration Act are made under the auspices of the police. The need for medical services may arise in the event of acute illness or injury during the arrest or psychological reactions to being arrested

and sent out of the country. Tempestuous behaviour can also lead to the police asking for medical assistance to calm the migrant, for example with sedatives.

Internment

The NPIDC at Trandum in Ullensaker municipality is a closed institution used for the internment of migrants awaiting a forced return. The centre has 220 places, and in 2018, 3040 migrants were detained there. Migrants normally only stay at the centre for a short period, but in 2018, 326 migrants were kept there for three weeks or more.

According to the Regulations of the NPIDC, interned migrants are entitled to health services *over and above* their statutory rights if the healthcare personnel who examine or treat them refer them for such treatment (2). This can take the form of, for example, a medical examination or treatment in the specialist health service or dental care. In 2018, the NPIDC's Supervisory Board found that the migrants at the centre received healthcare services according to the statutory and regulatory framework (3). We note, however, that the Supervisory Board does not have a mandate to oversee the health service ((4), p. 451).

According to Section 107 of the Immigration Act, a doctor's medical opinion must be obtained, where possible, when restrictions are initiated. Restrictions are defined as isolation, placement in a high security unit or high security cell, or the use of physical restraints.

The health service at the NPIDC consists of nurses employed by the NPIS and doctors from Legetjenester AS. This company has provided medical services since 2004, and has recently won a tender competition for the continued provision of these services (5, 6). Three doctors are affiliated with the NPIDC. These doctors visit migrants with an urgent need for medical care, give advice and guidance to the centre's staff and make referrals where needed.

Deportation

The processing centre at Oslo Airport Gardermoen is where preparations are made for the forced return of migrants. This includes a *fit to fly* assessment of whether the migrant is in a fit state of health to fly. The assessment is performed by the same doctors who are responsible for the curative services at the NPIDC. In the meeting with the Council for Medical Ethics, the head of Legetjenester AS stipulated that consideration should be given to whether it is medically justifiable for the person to fly and, if necessary, whether the trip can be made if healthcare personnel accompany the migrant. The assessment does not cover what happens in the destination country.

In 1951, the International Organization for Migration (IOM) was established, which is an international collaboration between 173 states working for the orderly and humane handling of migration. They define *fitness for travel* as follows: 'A state of physical and mental health that enables a person to travel safely, with no significant risk of deterioration under normal circumstances and with no risk of jeopardising the safety of other passengers' (7). Access to health

services in the destination country must also be taken into account. The Council of Europe's guidelines on carrying out forced returns ((8), point 16) point out that persons should not be forcibly returned if it is not medically justifiable.

In some cases, the NPIS wants a doctor to accompany the migrant on the flight out of the country. According to the police's instructions (9), consideration must be given to whether healthcare personnel should assist during the journey if the risk assessment identifies notable factors in the migrant's physical or mental health. What this means in a medical sense is not defined. When forced deportation takes place with support from Frontex, the European Border and Coast Guard Agency of which Norway is a member, there is a requirement for a doctor to accompany the migrant (10).

Criticism of the role of doctors

There has been criticism from the public domain in Norway of doctors assisting the police in the forced return of migrants, particularly since the 'Abbasi case' in June 2019 (11).

In 2015, the Parliamentary Ombudsman pointed out that there was a lack of capacity and availability of medical services for migrants at the NPIDC at Trandum (12). The independence of healthcare personnel was also questioned. The nurses are employed by the NPIS, while the doctors are provided by a company who works solely for the NPIS. Confidentiality has been breached, for example through employees at Trandum being used as interpreters and medicine dispensers addressed to migrants being handled by police officers instead of healthcare personnel (12). Criticism has also been aimed at the doctors' involvement in decisions on restrictions. It emerged that doctors gave advice on restrictions, even though the Mandela rules state that healthcare personnel should play no role in the decision-making process in relation to restrictions (13).

The Parliamentary Ombudsman also criticised the doctors' work and role in assessing whether a migrant is in a fit state to travel: 'The issuing of 'fit to fly' declarations highlights the challenges associated with the healthcare personnel's professional independence as regards the police. It is concerning that the declarations are prepared by attending doctors who work solely for the police' (12).

The Parliamentary Ombudsman suggested a number of measures to improve the health service for migrants interned at Trandum, including introduction of the 'import model' used by the prison health service. This entails the health services being provided by the local authority in the municipality of the institution, which will give a clearer demarcation between the health service and the police.

Previous assessments

The Norwegian Medical Association has addressed the issue of doctors' assistance in the forced return of migrants several times. The Council for Medical Ethics assessed the situation in 2004/05 and 2006 (14), pp. 3–4; (15), pp. 3–4), and concluded that for doctors to assist the police in calming apprehended migrants using medication during arrest and deportation was a contravention of the Code of Ethics for Doctors ((16).

The Council believed that doctors should only accompany migrants during deportation if the migrant himself wants the doctor to be there. However, the Council also believed that, on a par with other expert roles they perform for the police, doctors should be able to give their assessment of whether migrants who are to be forcibly returned are fit to travel. As a result, the Norwegian Medical Association's Human Rights Committee and the Council for Medical Ethics agreed on a recommendation in 2006, which the central board of the Norwegian Medical Association endorsed: 'Doctors should not assist the police in the deportation of asylum seekers. This does not preclude a doctor from giving a medical assessment of whether the person is in a fit state to travel. The doctor may be present [during the journey] if the asylum seeker in question has requested a doctor to be present' (17).

Current assessment

The current Council for Medical Ethics endeavours to ensure proper health care for migrants who are not legally resident in the country, including in connection with forced returns. However, major challenges arise when doctors provide health services to migrants who are in police custody and are to be forcibly returned. Real independence between the doctor and the police is crucial to maintaining trust in the doctor's role. Professional ethics guidelines provide important guidance for doctors in this role.

Our code of ethics states that the doctor's task is to protect human health, and that the doctor's deeds shall reflect basic human rights (Chapter I, Section 1) (16). The doctor must protect the individual patient's interests and integrity. The patient must be treated with care and respect, and the treatment must, where possible, be based on informed consent (Chapter I, Section 2). Doctors should not assist the police in administering drugs to calm migrants down against their will during deportation. The doctor's task is not to protect the interests of the police. It is particularly problematic if the doctor assists the police in implementing restrictive measures that could be construed as punitive.

Migrants who need medical care have the right to information about their state of health and treatment, in the same way as other patients (Chapter 1, Section 3). A well-functioning, independent interpreting service is a prerequisite for good medical care for migrants. The detention centre's employees should not be used as interpreters at medical consultations.

The doctor must comply with the duty of confidentiality, and information must only be disclosed with the patient's consent or under a legal provision (Chapter I, Section 4). Consequently, doctors should not disclose confidential

information to the police or to healthcare personnel employed in the NPIS. Furthermore, medicines for migrants should be distributed by healthcare personnel who have no affiliation with the police.

According to the 2007 recommendation, doctors can assist with 'fit to fly' assessments for migrants who are to be deported. Where possible, the migrant's informed consent should be obtained for conducting such assessments. If the migrant does not give consent, the doctor's assessment should, in principle, be conducted under a legal provision. Like the Parliamentary Ombudsman, the Council finds it concerning that the attending doctor performs the assessment at the request of the police, cf. the Code of Ethics for Doctors, Chapter I Sections 2 and 4. In line with the definition by the International Organization for Migration, the assessment should also take account of information on the access to health services in the destination country.

The Council for Medical Ethics supports the Parliamentary Ombudsman's recommendation for the health service linked to the NPIDC and the processing centre to be organised according to the 'import model'. This will reinforce the independence of the health service from the police. If necessary, legislative changes should be made.

The Council for Medical Ethics questions whether doctors should accompany migrants during forced deportation unless the migrant has requested a doctor to be there. Such a request should have a specific health-related basis. If the migrant has not given consent and forced deportation cannot be carried out in a proper manner without a doctor, it is an indication that deportation is not justifiable.

Summary

Doctors who perform health services for interned migrants are encouraged to familiarise themselves with the Code of Ethics for Doctors and to be sure that they are practising medicine in line with the professional ethics guidelines. Understanding their role is particularly important, and this can be reinforced by the doctor's work being commissioned by the *local authority* as opposed to the NPIS.

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