

Mandates of the Special Rapporteur on the rights of persons with disabilities and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

REFERENCE:
UA GBR 2/2017

13 April 2017

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the rights of persons with disabilities and Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, pursuant to Human Rights Council resolutions 26/20 and 33/9.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the alleged violation of Mr. [REDACTED]'s right to effective and efficient access to justice, exposure to forced medical treatment and breach of his right to physical and mental integrity, and denial of access to community support for independent living, on grounds of his psychosocial disability.

According to the information received:

Mr. [REDACTED] is a 51 years-old man with disabilities due to a severe brain injury sustained since 2009.

In September 2009, Mr. [REDACTED] contacted the Market Street Police Office indicating that a 14 year-old girl was under the risk of being exposed to sexual abuse and requesting them to intervene and investigate the case. In addition, he raised his concerns with the Newcastle Council Department of Social Services, Northumbria Newcastle upon Tyne NHS Foundation Trust, North Tyneside Council and Social Services, and the CPS North East, requesting them to undertake immediate measures to protect the girl child from sexual abuse. According to Mr. [REDACTED]'s accounts, the police ignored his complaint and failed in duty to investigate the matter.

On an unspecified date in 2010, he lodged a petition with the Northumbria Police complaining that the Market Street Police Office and the social protection services disregarded his allegations and failed to protect a girl child he reported as being at risk of sexual abuse. The Northumbria Police refused to register the complaint on grounds that Mr. [REDACTED] couldn't be considered a credible witness. His subsequent requests addressed to the Northumbria Police and to the Newcastle Council, Department of Social Services were dismissed as well. Mr. [REDACTED] filed a number of official complaints with the Independent Police Complaints Commission, with the Home Office, and with the Ministry of Justice, alleging that the reported sexual abuse allegations were neglected by the local police. On 19 November 2010, the Home Office informed Mr. [REDACTED] that they could not

intervene in any investigation or decision made by Independent Police Complaints Commission. According to the record of complaints, from 2011 to December 2016, Mr. [REDACTED] lodged 23 official requests with the Independent Police Complaints Commission which issued a decision not to investigate any of them.

On an unidentified date in 2010, Mr. [REDACTED] was arrested and charged with two counts of harassing conduct against the employees of the Northumbria Police and the staff members of the Newcastle Council Department of Social Services, on grounds that he caused nuisance and they feared his conduct. The case was passed to the Newcastle Crown Court. The available information indicates that Mr. [REDACTED] tried to get a copy of all his custody records to establish the exact dates of his detention, but the Northumbria Police Crime Commissioner refused his request.

Mr. [REDACTED] contacted the Equality and Human Rights Commission and sought legal assistance. On 7 October 2010, he was informed through an official letter that the Commission was not in a capacity to take up his case, but they recommended him to contact the Community Legal Service. Mr. [REDACTED] was provided free legal representation; however, on the day of the trial, the lawyer withdrew from the case under the pretext of being relocated from the Newcastle Crown Court to the Moot Court. The absence of legal aid and representation limited Mr. [REDACTED]'s opportunities to construct his defense.

Even without benefiting from legal representation, the Newcastle Crown Court acquitted him on 20 November 2012, as the prosecution failed to bring any evidence of the crime. Nevertheless, the court has issued a five years restricting order against Mr. [REDACTED] by the means of which he was prohibited to contact directly or indirectly the Newcastle Council Department of Social Services, and the Northumbria Police, in conformity with the Protection from Harassment Act 1997, Section 5(5) and 5(6).

On 31 May 2013, Mr. [REDACTED] was arrested for a second time under the accusation of shining a laser light at the cockpit of a police helicopter that was flying above his house. On 3 June 2013, he was taken to the North Tyneside Magistrate Court. On the same day, the judge ordered Mr. [REDACTED]'s psychiatric assessment, in conformity with the provisions of the Mental Health Act 2007. From court, he was taken directly to the St George's Park Hospital in Morpeth. In his assessment report, the psychiatrist described Mr. [REDACTED] as a calm, lucid and cooperative person. Nevertheless, he was placed under involuntary psychiatric hospitalization and treatment. On 10 June 2013, Mr. [REDACTED] was discharged from the hospital and placed under compulsory community mental health treatment. Compliance with the forced treatment plan was supervised by the North Tyneside West Community Mental Health Team. Under this regime, Mr. [REDACTED] continued to receive non-consensual medical treatment, including through the prescription of Olanzapine, Mirtazapine and Diazepam.

In January 2015, the attending doctor concluded that Mr. [REDACTED]'s mental health has deteriorated and he was again forcefully hospitalized for five weeks, exact dates are not available. After discharge, he continued to receive non-consensual bi-monthly injections of Risperidone.

Mr. [REDACTED] sought his doctor's permission to discontinue the administration of the drug due to its serious and severe side effects. He reported having lost motivation, feeling desperate, experiencing apathy and difficulties in getting pleasure from things which he enjoyed doing before, blurred thinking, problems with concentration, inability to maintain focus and trouble completing tasks. He showed willingness to try alternative therapies which would teach him to better respond to stressful situations and to receive other non-medical support services, instead. However, he was offered a different injection which is administered only once a month. Mr. [REDACTED] refused to accept the new medication and asked the Equality and Human Rights Commission, and the Parliamentary and Health Service Ombudsman to intervene on his case, alleging that as a victim of forced medication he was under constant fear for his life, suffered anguish and emotional distress associated to the deep feelings of helplessness. His requests were left without an answer.

On 1 August 2013, Mr. [REDACTED] applied for Disability Living Allowance with the aim of acquiring the support of a homeless assistant. In response, the Disability and Carers Service informed him that he did not meet the eligibility criteria for the service. He also, applied for social housing, but he was informed by the Housing Department that because at the time he was living in his mother's house, he could not qualify as homeless and therefore was not entitled to social housing.

Without prejudging the accuracy of these allegations, we are expressing grave concern at Mr. [REDACTED]'s denial of access to justice, prolonged administration of psychiatric medication without free and informed consent, and denial of support for living independently in the community.

It is highly concerning that no adequate actions seems to have been taken by the appropriate law enforcement mechanisms to record and investigate Mr. [REDACTED]'s allegations about a girl child being at risk of sexual abuse. It seems that the police disregarded Mr. [REDACTED]'s reports on grounds of his disability. Furthermore, as a result of his complaints he was placed under arrest and subjected to victimization.

We are equally concerned by the barriers that impeded Mr. [REDACTED]'s access to justice, including the lack of procedural accommodations, difficulties in getting legal information regarding his case, failure to secure legal aid and representation, coupled with the limited understanding of disability rights in the justice sector. Furthermore, the blanket five years prohibition from lodging complaints with the police, imposed on

Mr. [REDACTED] through a court order, appears to have left him without any way of seeking the intervention of law enforcement bodies and accessing justice altogether.

We are concerned that Mr. [REDACTED] was denied the exercise of his right to independent decision-making and was involuntarily detained in a psychiatric hospital and subjected to treatment without having the opportunity to provide free and informed consent.

Furthermore, we would like to note that access to housing is a crucial constituent of the right to independent living in the community. Nonetheless, it appears that Mr. [REDACTED] was negatively affected by the lack of appropriate social housing and other community support services which obliged him to continue living with his mother and to depend on her support.

In connection with the above alleged facts and concerns, we would like to remind your Excellency's Government of the applicable international human rights norms and standards relevant to this case, including the obligation to ensure that persons with disabilities exercise fully and effectively all their human rights and fundamental freedoms on an equal basis with others.

The above-mentioned facts appear to be in contravention of the rights of persons with disabilities as enshrined, inter alia, in articles 12, 13, 14, 17, 19 and 25 of the Convention on the Rights of Persons with Disabilities, ratified by the United Kingdom of Great Britain and Northern Ireland on 08 June 2009 and articles 12 and 14 of the International Covenant on Economic, Social and Cultural Rights, ratified by the United Kingdom of Great Britain and Northern Ireland on 20 May 1976.

The Convention on the Rights of Persons with Disabilities supersedes previous international developments and represents the most advanced international human rights instrument on the rights of persons with disabilities. Article 13 of the Convention refers to an all-encompassing and stand-alone right of access to justice for persons with disabilities. It requires a clear prohibition of discrimination by the organs of the justice system and throughout all stages of legal proceedings, regardless of the procedural status of the person with disabilities. It explicitly provides that States should take all required measures to facilitate their role as direct or indirect participants, including as witnesses. It guarantees "effective access to justice" by setting a fundamental obligation related to the provision of "procedural accommodations" which are meant to ensure that, when engaging with the justice system, persons with disabilities are heard and appropriate action is taken. Changing the eligibility criteria for legal aid to make it available to persons with disabilities is an example of procedural accommodations that might be expected of States. In their General Comment 32, the Human Rights Committee draws particular attention to the availability or absence of legal assistance as a determinant of whether or not a person can access the relevant proceedings or participate in them in a meaningful way (see CCPR/C/GC/32, para. 10). Lastly, article 13, paragraph 2, explicitly requires States to provide the judiciary, police and other staff with disability training.

On the issue of forced and non-consensual administration of treatment and hospitalization, we would like to draw your Excellency's Government attention to the articles 12 on legal capacity and article 25 on the highest attainable standard of health, as enshrined in the Convention on the Rights of Persons with Disabilities. When read in conjunction, these articles guarantee the rights of persons with disabilities to make autonomous health and treatment related decisions, and have them respected (see CRPD/C/GC/1, para. 41).

Accordingly, the normative content of article 12 of the International Covenant on Economic, Social and Cultural Rights includes both freedoms and entitlements; freedoms include the right to control one's health and body as well as the right to be free from non-consensual medical treatment and experimentation guarantying the right to health care on the basis of free and informed consent. In General Comment No. 14 on the right to the highest attainable standard of health, the Committee on Economic, Social and Cultural Rights establishes that the normative content of article 12 includes the right of everyone, including persons with disabilities, to non-discrimination, including on matters related to the provision of consent. This position was further supported by the Committee on the Rights of Persons with Disabilities in their concluding observations to States, making explicit reference to the right of persons with disabilities to freely accept or refuse treatment and to be granted access to adequate decision making support when seeking to make informed health related choices.

The involuntary hospitalization of persons on the grounds of the existence of an impairment or perceived impairment, particularly on the basis of psychosocial or intellectual disability or perceived psychosocial or intellectual disability, is prohibited by article 14 of the Convention on the Rights of Persons with Disabilities. This practice is discriminatory in nature and amounts to arbitrary deprivation of liberty, thus States shall take all necessary legislative, administrative and judicial measures to prevent and remedy involuntary committals or internments based on disability (see the Guidelines on article 14 of the Convention on the Rights of Persons with Disabilities, para. 6).

International human rights law also requires States to provide persons with disabilities access to appropriate support to live independently in the community and participate in society, on an equal basis with others. As provided for in article 19 (a) of the Convention on the Rights of Persons with Disabilities, States have an obligation to ensure access to a wide range of support services to persons with disabilities, and to ensure that persons with disabilities have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement. Drawing from the facts presented above, in the case of persons with psychosocial disabilities, the provision of adequate housing and community support are essential protection measures to enable their dignified and effective participation in society.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the above-mentioned rights of Mr. [REDACTED] in compliance with international instruments.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comments you may have on the above-mentioned allegations.
2. Please provide information on the legal grounds for Mr. [REDACTED]'s confinement to a psychiatric hospital and medical treatment against his will and without free and informed consent. Please indicate how these provisions are compatible with international human rights norms and standards.
3. Please explain what community support services and treatment alternatives respectful of the rights, will and preferences of persons with disabilities have been made available to Mr. [REDACTED].
4. Please explain what measures have been taken to ensure that Mr. [REDACTED] can exercise his right of access to justice, including the measures taken to ensure the provision of procedural accommodation in all legal procedures.
5. Please refer to the legislation, policies or programmes that have been implemented to ensure equal access to and enjoyment of the right to adequate housing by persons with disabilities and provide details on what housing arrangements respectful of the rights, will and preferences of persons with disabilities have been made available to Mr. [REDACTED].
6. Please provide information regarding the legislative reform processes and other measures that have been taken to ensure that health care, including mental health treatment, is always provided with the free and informed consent of the person with disabilities, in accordance with the Convention on the Rights of Persons with Disabilities and the International Covenant on Economic, Social and Cultural Rights.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

We seek your cooperation and openness to engage with the special procedures mandate holders which are joining this communication with the aim of assisting with the implementation of the international human rights norms and standards relevant to this case, including the obligation to ensure that persons with disabilities may exercise fully and effectively all their human rights and fundamental freedoms on an equal basis with others, notably as provided by the Convention on the Rights of Persons with Disabilities.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

Catalina Devandas-Aguilar
Special Rapporteur on the rights of persons with disabilities

Dainius Puras
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standard of physical and mental health

