



A follow-up investigation on the quality of medical documents from examinations of Basque incommunicado detainees

The role of the medical doctors and national and international authorities in the prevention of ill-treatment and torture

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ARTICLE INFO

Article history:

Received 14 November 2007

Received in revised form 27 September 2008

Accepted 2 October 2008

Available online 7 November 2008

Keywords:

Ill-treatment

Torture

Police custody

Forensic medicine

Prevention

ABSTRACT

According to the United Nations and the European Committee for the Prevention of Torture (CPT), torture and ill-treatment continues to be a problem during incommunicado detentions in Spain. CPT has visited Spain and published recommendations for improvements of preventive medical examinations. However, no scientific assessment of the impact of such recommendations exists. The objectives of this study were to assess the quality of documents from preventive medical examinations and the prevalence of alleged ill-treatment and compare findings with similar data from a previous study.

Documents issued by state employed doctors describing medical examination of Basques held incommunicado during 2000–2005 were reviewed. The analysis covered allegations of ill-treatment and existence and quality of information essential for medical appraisal of allegations of ill-treatment. The material was collected by a non-governmental organisation.

Of 425 documents concerning 118 persons, 85% had no formal structure and the format recommended by CPT was never used. None of 127 documents, concerning 70 persons with allegations of ill-treatment had an overall conclusion on the likelihood of ill-treatment. Twelve to 68% of necessary data were totally missing, and only 13–38% of existing information was sufficient. There was significant variation between the reporting of individual doctors, but in general the quality was unacceptable, although somewhat higher than in the previous study. The prevalence of allegations of ill-treatment was as high as previously. There were more reports of psychological ill-treatment and procedures of forced physical exhaustion, but fewer reports of beatings.

In conclusion, there was no indication that the conditions of incommunicado detainees have improved substantially over the past 15 years and the standard of medical reporting was unacceptable. The Spanish authorities should give clear objectives and guidelines for medical examinations of detainees. An independent forensic specialist with the overall academic responsibility for preventive medical examinations of detainees should be employed to supervise state employed doctors. The present article shows the necessity for harmonization of medical practice in documentation of torture.

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1. Introduction

Medical examination is one of the best ways to obtain evidence of torture. In this way, medical doctors are in many countries

employed by the state to perform regular examinations of detainees in police stations. However, the quality of such work has been questioned [1–5]. In a previous study, we concluded, that the quality of medical documents issued in Spain in the years 1991–1994, describing routine examinations of detainees held incommunicado, was very low [4].

During the recent years there has been an increasing interest in ensuring that the practice of security forces towards inmates is up

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to the standard given in national law and international conventions. However, as far as we know, there has been no scientific research on the impact of measures of prevention of torture.

The European Committee for the Prevention of Torture (CPT) is one of the most advanced organisations to prevent violations of the rights of detainees. From 1996 to 2003, the CPT has published seven reports from Spain describing visits to closed institutions carried out in the period 1991–2001 [6–12]. The CPT has repeatedly recommended several measures to improve the deficient reporting by forensic doctors. Thus, these reports suggest to include: (a) description of state of health and any allegations of ill-treatment; (b) the doctor's objective medical findings based on a thorough examination; and (c) the doctor's conclusions in the light of (a) and (b). In 1997, the Spanish Government published a standardised form for the recording of findings of forensic doctors, but it did not include allegations of ill-treatment and the doctor's conclusions [13].

We wanted to examine whether national efforts and international visits to detention centres would be reflected in changes in the prevalence of allegations of ill-treatment of detainees held incommunicado (considered to imply the greatest risk of ill-treatment), and in the quality of medical reports from examinations of detainees. Thus, the aim of this study was to appraise the quality of medical forensic documents from 2000 to 2005 and to compare these findings and the prevalence of allegations of ill-treatment with similar findings from our previous study [4].

2. Material and methods

The antiterrorist Justice Court, Audiencia Nacional (AN), is a special tribunal located in Madrid. The Spanish antiterrorist legislation allows for incommunicado detention for a period of 5 days. Forensic doctors employed by the AN (FDAN) examine detainees in the central police stations in Madrid on a daily basis, and again in the AN on the day they are presented in court. In provincial police stations, the medical examinations are usually carried out by forensic doctors of local institutions (FDLI).

With the consent of the ex-detainees, we had access to 425 documents concerning medical examinations of 118 persons held incommunicado under the antiterrorist legislation in the period April 2000 to July 2005.

The documents have been collected by a non-governmental organisation, Torturaren Aurkako Taldea (TAT). They represent all the documents from the studied period obtained by TAT. The TAT lawyers have obtained these documents by way of the judicial files containing the denunciations of torture. In accordance with the Helsinki Declaration, all persons gave informed consent to the TAT to study their documents [14].

Our analysis of the documents covered:

- the structure of form (document) used, according to the CPT or the Spanish Government's recommendations [6–13];
- the degree of co-operation from the detainee to the anamnesis and physical examination;
- the existence and sufficiency of information about allegations of ill-treatment;
- the existence and sufficiency of information about subjective state of health;
- the extent of a physical examination;
- clinical findings indicating exposure to recent violence;
- the existence and quality of conclusions as to age or origin of any recent lesion;
- the presence of a conclusion about any allegation of ill-treatment.

We assumed that the examinee co-operated to the examination, unless the doctor stated explicitly that (s)he did not.

If ill-treatment was alleged, there should be a reasonable description of presence or absence of symptoms that are common after such violence. In case of alleged beatings, these should be described as to region of the body and whether instruments, fists or open hands were used.

All detainees should have the whole surface of the body examined, and when beatings were alleged there should be a description of the regions allegedly hurt.

Conclusions on the age and origin of the lesions were assessed according to international standards [15–18], and classified as *acceptable*, *unacceptable*, *insufficient as to premises*, or *questionable* when not possible to fit into the first three groups.

We compared the pattern of reporting of the FDAN and the FDLI; the reporting from central police stations and from the AN; and the reporting of individual doctors.

In the comparison between the two study periods [4], we used similar indicators, emphasising lack of relevant information.

In our previous study we assessed the quality of 318 medical documents concerning 100 Basque detainees held incommunicado in Spain during the period 1991–1994 [4]. All these documents were revised to define their structure; likewise, their descriptions of ill-treatment were revised because the previous study focused on *physical* ill-treatment. There were 6 documents with allegations of psychological ill-treatment without allegations of physical ill-treatment. Thus, the number of documents with allegations of ill-treatment was 77 instead of 71, which was the value given in the published paper [4].

The statistical method used was χ^2 test, when necessary with Yates' correction and Fisher's exact test.

3. Results

For the period 2000–2005, our material comprised 425 documents concerning 118 persons in the age group 19–55 years, median 26 years. Eighty-nine (75%) were men. Five FDAN issued 345 of the documents, 288 in central police stations and 57 in the AN. Twenty four FDLI issued 74 documents and 6 documents were issued by police doctors. None of the forensic documents we had access to was issued by a doctor of the detainee's choice or by a non-state employed doctor.

3.1. The structure of the documents

There was no formal structure in 363 (85%) documents. Dr. A (FDAN) used sheets, apparently self-made, with two or three headings (“history”, “examination” “conclusion and observations”) in 44 (60%) of his reports. The remaining ones were without headlines. A similar structure was used by one FDLI on 8 occasions. Nine FDLI used in 10 examinations a formal format in line with the directives of the Spanish Government from 1997. Three of these documents included a subheading “ill-treatment” and a space for evaluation of injuries. Ninety-three documents were handwritten, 14 being only partially readable.

One document by a FDLI was supplemented by photographic documentation of lesions. Two other FDLI documents included body drawings with indications of lesions. In one case of alleged electrical shocks with visible lesions, a hospital dermatologist undertook an examination that included photo documentation [19].

3.2. The content of the documents (Table 1)

Lack of co-operation to the history of exposure to ill-treatment and subjective state of health were 9 and 12%, respectively. To the physical examination, lack of co-operation was total in 178 (42%) and partial in 40 documents (9%).

In 256 documents there was some information about presence or absence of exposure to alleged ill-treatment. In 127 of these documents the doctors quoted the examinees to have been ill-treated. In another 129 documents, the examinee was quoted to deny ill-treatment. The terminology to describe treatment was ambiguous in 40 documents. Physical violence, mainly beatings was alleged in 66 documents. Information about symptoms related to ill-treatment was not indicated in 45 documents. This information was considered to be sufficient only in 11% of the 127 documents alleging ill-treatment. In the 66 documents with allegations of beatings, this information was assessed to be sufficient in 33% (Table 1).

There was some information on subjective state of health in 280 documents. Presence of one or more symptoms was described in 187 documents. The symptoms most commonly described were

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