

## Consular assistance for seriously ill and injured nationals. Practice and law

Consular assistance for nationals of sending State consists of variety of activities, from routine issuance of travel documents and administration of various affairs of expatriates to complex and politically sensitive cases of imprisonments and kidnappings. Consular assistance to seriously ill or injured nationals is mentioned among usual causes and types of assistance. The European Union lists it among emergency situations deserving assistance of embassy or consulate of other Member States, if mission of home country is absent in the third country<sup>1</sup>.

This consular assistance attracts little attention. It can be explained. Assistance for nationals arrested and imprisoned conflicts inherently with policy of host country. Kidnappings are related to political instability or criminality. Disasters and conflicts affect groups and are thus covered by media and followed by public. Issuance of travel documents and other administrative services for nationals are evaluated whether they are smooth and convenient.

Nevertheless, consular assistance for seriously ill and injured nationals is not a negligible issue. For the Czech Republic – a medium-sized country – whose nationals travel in millions abroad, hundreds of cases occur per year. Certainly, injured and ill nationals assisted by consular officers form top of iceberg. In same time, thousands of travelers are capable to obtain health treatment and accompanying services without consular assistance, being helped, if necessary, by their relatives, journey companions, or by travel agencies. Such cases are usually not reported to consulates or to the Ministry of Foreign Affairs. Therefore, few data are available. And self-treatment abroad can be hardly counted. Many ill and injured travelers prefer preterm or immediate return home instead of seeking health care abroad.

Consular assistance to seriously ill or injured is often related to other situations requiring consular assistance: travel accidents, natural disasters, wars and conflicts. Furthermore, detained nationals face serious illnesses and injuries, while assistance for them is complicated with restrictions inherent to detention. Death which is also specific situation requiring consular assistance (issuance of death certificate, help in repatriation of remains or cremation) occurs sometimes because appropriate health care or evacuation was not available.

<sup>1</sup> Decision 95/553/EC, Article 5(1)(b) and (e).

Few types of consular assistance are defined so vaguely as the assistance in cases of serious illness or injury. National laws on consular assistance put it often together with other emergency situations. Specialties of this assistance are thus not addressed. Such approach can cause principal misunderstanding about the nature of the assistance.

Restrictive approach sees the consular assistance for seriously ill or injured nationals in negotiation of necessary health care and related services (evacuation, including repatriation). Especially troubles specific for being abroad, language barrier, and lack of orientation related to health care and its financing is expected to be resolved by consular officers. Nevertheless, it is expected to be realized at the expense of the affected national, relatives, employer, companions, insurers, or public institutions for financing of health care, and not at the expense of the consular service of protecting state.

On the contrary, extensive approach includes reimbursement of health treatment and related services, especially medical evacuation and repatriation provided by health care providers available in host country, or by protecting country itself through its own health care providers.

Countries obviously prefer restrictive approach to consular assistance in case of serious illness or injury of their nationals. Foremost, it is cheaper. Furthermore, nationals are usually capable to pay for health care they need abroad. Nevertheless, policy of many countries shifts towards extensive approach under specific circumstances. Such situations are disasters, wars, and conflicts, especially if more persons are affected. Certain attention is also paid to detained nationals. Shift towards more extensive consular assistance is in line with demand of general public for better services and can be perceived as territorial extension of welfare state.

In general, necessary health care is provided for travelers according to legislation of host country. Medical law of many countries often does not address specifically health care for injured and ill foreigners.

Such equal treatment is suitable, as regards first aid in case of utmost emergency. Hospitals and other providers of health care should thus help all people without taking into account their status, albeit it can have consequences for reimbursement.

Nevertheless, ignorance of special situation of ill and injured foreigners causes also troubles.

Informing embassies and consulates about the fact that their national is seriously ill or injured would require clear framework, because protection of privacy (medical secrecy) is strengthened in many countries.

Another problematic aspect of health treatment of foreigners is communication of physicians, nurses and other health professionals with seriously ill or injured foreigner. Informed consent with health care is compromise in many situations, foremost in cases of urgency. Patients have often limited intellectual

capacity to understand their situation and how their country can be helped in such impossible situations.

Furthermore, it is difficult to negotiate suitable conditions. Consular officers are sometimes not accompanied by interpreters or companions or interpreters of many countries. Lack of treatment or non-treatment in home countries.

Special attention should be given to security and health care of those who are treated even against their will. Involuntary treatment of individual persons due to their illness is not intent to dehumanize and security. Countries are expected in legislation to act as possible and best.

An important aspect is financing of health care.

Inquiry of reimbursement shall start with contemporary world. Lack even the most advanced health care and public health care facilities for billions living in developing health care facilities. Coverage of population. Private health care.

It shall be noted that in America are known population. Only make health care.

Nevertheless, do not label health care shaped as public.

National health care for injured or ill nationals. Injuries of their persons.

capacity to understand relevant information. They also face significant stress due to their situation. Treatment of foreigner who does not know language of host country can be realized in many cases only without any information. Recognition of such impossibility by law seems better for me than pretending understanding.

Furthermore, seriously ill or injured persons are often not capable to negotiate suitable treatment because they are unconscious or comatose. Consular officers are sometimes expected to negotiate together with relatives and companions or instead of them. This is, however, barely reflected in medical laws of many countries. Other solutions are also not feasible. Judicial approvals of treatment or nomination of guardian are similarly problematic in both host and home countries.

Special attention deserves health care imposed for protection of public security and health. Contagious diseases and serious psychiatric disorders are treated even against will of patient. From this point of view, quarantine or involuntary treatment of an insane is comparable with police or judicial detention of individual suspect of crime. Certainly, the foreigner is perceived as dangerous person due to its health situation, and not due to its behavior. Host country does not intent to detain him/her for other reasons than protection of public health and security. Consular assistance is thus welcomed in general, albeit often not expected in legislation. In many cases host country pushes for repatriation as soon as possible and home country is sometimes reluctant to take over him/her.

An important aspect of health care for seriously ill and injured foreigners is financing of health care they need in host country.

Inquiry of relation between consular assistance and financing of health care shall start with consideration of huge differences among countries of contemporary world. Millions of people in the poorest (least developed) countries lack even the most essential health care. They do not have money for private health care and public health care service is deficient or even unavailable. Perhaps billions living in developing countries in Asia, Africa and Americas have public health care facilities financed by the government. There is, however, no general coverage of population. Significant co-payments are necessary in many cases. Private health care providers assure better care.

It shall be noted that even highly developed countries - the United States of America are known example - hardly make health care affordable for all their population. Only most European and several non-European developed countries make health care affordable for everybody with immense public financing.

Nevertheless, even the countries with developed public systems of financing do not label health care as service which is provided for free. Systems are usually shaped as public insurance, while prices are calculated.

National health care policies are reflected in consular assistance for seriously injured or ill nationals abroad. Little attention of government for illnesses and injuries of their people at home, no assistance is usually also provided to nationals

abroad. The poorest countries often do not care for their ill or injured nationals at all.

Richer countries assist their nationals also in cases of serious illness and injury. Nevertheless, even the developed countries with universal coverage of their population are prepared to reimburse health care for their nationals abroad only partially.

Most systems expect public financing of health care on their own territory. There is little willingness for exportation of money abroad, because it reduces finances available for domestic health care providers. Furthermore, doubts about quality can be raised. Institutions of reimbursement cannot control quality. Therefore, most countries exclude reimbursement of health care absolutely or limit it.

Bilateral agreements sometime expect reciprocal assistance. Among socialist countries formal reciprocity was expected and health care was provided essentially for free without any reimbursement. However, the number of tourist and business travelers was low.

The coordination of health care systems within the European Union based on reimbursement is more feasible. The mechanism is extended on multilateral basis on several other European countries often visited by nationals of Member States of the European Union.

Nevertheless, limits of public reimbursement under unilateral, bilateral and supranational schemes are apparent. Many schemes expect equal treatment. Such treatment is often unsatisfactory for nationals of richer countries in poorer countries. In other cases, reimbursement based on domestic rates is partial in richer countries where prices are higher.

Private insurance of health care expenditures and related services – evacuation and repatriation (travel insurance) is a solution for most travelers. Certainly, several risky groups are excluded (women in later phases of pregnancy, elderly people), or their insurance is expensive. Some activities are risky (sports, occupational activities) and insurers thus ask for high premiums. Reimbursement of care due to pre-existing diseases is also usually severely curtailed. Chronic must thus usually pay for their treatment. Injuries and illnesses resulting from activities prohibited in the territory of host country are not covered.

High quality consular assistance in case of serious illness or injury is thus based foremost on knowledge how health care reimbursement functions in reality. Consular officers should know which institutions and centers are to be contacted, which information shall be delivered, which forms, confirmations, and invoices are required by hospitals and other health care providers, institutions of reimbursement, or agencies of insurers in both host and home countries of seriously ill or injured national.

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<sup>2</sup>Which contrasts with a then not integrated.

however, reveal little about such know-how. Foremost, travelers are strongly recommended to purchase adequate travel insurance. Few European countries – Austria – inform in detailed manner, describing nature and limits of assistance.

There are cases in which consulates protect nationals with intervention going far beyond communication, advice and negotiation.

Little financial burden is temporary guaranty until public or private reimbursement is confirmed if urgent health care is refused without such guaranty. This happens in poorer countries in Americas, Africa, and Asia where no first aid is barely available or treatment of higher quality expected by national of developed countries must be paid.

There are also cases in which no public or private reimbursement can be expected. In these cases, policies vary from country to country and from case to case. Health care is sometimes paid even for highly irresponsible people, if their lives are threatened. Essential health care for arrested and imprisoned nationals is sometimes financed by consulates. Little information is provided about such cases, because it could promote hazardous behavior or is unpopular. Nevertheless, all financing is perceived as loan resulting in debt of assisted national.

According to principles of international law, consular assistance is provided to all nationals abroad, including those who decided to live for long term or permanently there (expatriates). These nationals are entitled to return at any moment to their home countries.

Social protection is, however, organized otherwise. According to international tax and social laws, nationality plays little role. People are required to pay taxes and entitled for social benefits and services in their country of residence. After all, they usually work or run a business there. Expatriates thus leave their homeland from economic and social point of view. Their eventual return for better social benefits or services, including better and/or affordable health care can be thus perceived as misuse of welfare state<sup>2</sup>.

International consular law is, however, reluctant to allow extension of consular protection on permanent and long-term residents without nationality. Probably, countries would fear interference into their domestic affairs. Nevertheless, assistance to seriously ill and injured does not usually cause tension with host country and it is usually no exercise of public power. As I have mentioned, most ill and injured travelers do not need consular assistance.

There are also other issues of consular service not falling under title and topic of this paper, which, nevertheless, broaden experience of consular officers with health care and its legal framework in both sending and receiving countries and

<sup>2</sup>Which contrasts with avarice towards long-residing and working foreigners which are not integrated.

thus can contribute to improvement of consular assistance for seriously ill and injured nationals.

Firstly, the ministries of foreign affairs of developed countries and their embassies and consulates contribute to prevention. Travelers are routinely advised to undergo vaccination and informed about health risks in countries they want to visit. Embassies and consulates closely follow epidemic situation in receiving country or its region, issue recommendations and assist nationals if they decide to return home. In these cases, they cooperate closely with ministries of health care and other authorities competent for protection of public health.

Secondly, embassies and consulates contribute to realization of public health aspect of immigration policy of sending country. Many countries restrict even short-term immigration of persons suffering serious illnesses, especially contagious diseases<sup>3</sup>. While assessing visa applications, health status of applicants is tested with statements, certificates or examinations.

Finally, experience with health care in consular service can result from medical tourism. Health troubles abroad are complication sometimes requiring consular assistance for most people. Other people, however, travel intentionally abroad for health treatment. Reasons for such step are various. The treatment is often cheaper and thus affordable for somebody. Availability or better quality of treatment can be decisive for others. Finally, specific health care is sought abroad because it is restricted at home: abortions, reproductive medicine. Nevertheless, everything can lead to troubles. Medical tourists are not different from other tourists. Furthermore, their troubles can result from medical malpractice. Several developed countries started to inform about risks of medical tourism in particular countries<sup>4</sup>.

Developed countries will continue consular assistance for their seriously ill and injured nationals, while limiting willingness to pay for extraordinary cases. Significant changes in practice can hardly be expected. Nevertheless, something should be improved. Ministries of foreign affairs can consider how to inform about their consular practice. Countries which have decided to (re)codify their laws on consular protection can describe assistance for their nationals in case of serious illness or injury with appropriate words. Both would certainly contribute to reduction of misunderstanding of what consular protection of nationals of developed European country which become seriously ill or injured abroad is in reality and how it can be improved in future.

<sup>3</sup> Among developed countries USA, among other countries Libya and Saudi Arabia.

<sup>4</sup> For example, Germany.

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