

CRIMINAL RESPONSIBILITY OF MEDICAL WORKERS FOR DISPENSING NARCOTIC DRUGS TO REDUCE THE SUFFERING OF PATIENTS

Maria V. Talan¹, Oleg N. Dunin^{2*}

^{1,2}Kazan Federal University, Russia.

Email: *ondunin@mail.ru

Article History: Received on 05th October 2019, Revised on 30th November 2019, Published on 12th December 2019

Abstract

Purposes: This article is devoted to the analysis of the problem that has been developed in the Russian Federation with the access of patients with severe pain to narcotic painkillers.

Methodology: The legislation of the Russian Federation recognizes that patients have an unconditional right to pain relief, which is reflected in the Federal Law No. 323 dated November 21, 2011 "On the Basics of Protecting the Health of Citizens in the Russian Federation". However, the procedural rules governing the receipt of narcotic painkillers by patients establish strict bureaucratic rules that impede the timely access of patients to the only effective narcotic drugs in their case.

Results: Deviation from these procedural rules threatens medical and pharmaceutical workers with criminal liability for illegal drug trafficking. As a result, Russian patients do not receive painkillers on a significant scale. The quality of life in the patient, who is forced to endure severe pain, is significantly reduced, which often leads to suicide. Various legislative solutions to this problem are proposed.

Implications/Applications: Liberalization of the rules for dispensing narcotic painkillers are effective in the long term, but it has several problems. Slight liberalization is not able to fundamentally improve the situation of patients with severe pain.

Novelty/Originality: Significant liberalization can create a negative narcotic situation due to market saturation with legal narcotic drugs. In the short term, an effective measure will be the exclusion of the criminal liability of medical and pharmaceutical workers for the prescription and dispensing narcotic painkillers to patients with severe pain syndrome in violation of the existing procedural rules, but for medical reasons.

Keywords: *Narcotic Painkillers, Circumstances that Exclude Criminal Acts, Criminal Law, Medical Law, Human Rights, Right to Pain Relief.*

INTRODUCTION

The legislation of the Russian Federation recognizes the unconditional right to pain relief for patients. It is guaranteed by clause 4 of Art. 19 of the Federal Law No. 323 dated November 21, 2011 "On the Basics of Protecting the Health of Citizens in the Russian Federation", according to which each patient has the right to pain relief associated with a disease, condition and (or) medical intervention, methods, and drugs, including narcotic drugs and psychotropic drugs. [Lohman, D., Schleifer, R., & Amon, J. J. \(2010\)](#)

This right is specified by other by-laws, instructions, guidelines, for example, methodological recommendations No. 9588-VS dated December 27, 2007 "Detection of malignant neoplasms and provision of medical care to cancer patients" approved by the order of the Ministry of Health and Social Development of the Russian Federation contain the norm according to which medical workers shall provide palliative help, treat severe pain. [Frankel, L. H. \(1966\)](#)

However, there is a situation in which significant problems arise with the practical implementation of the right of citizens to pain relief in practice in Russia today. Often, patients with acute pain, undergoing severe pain, cannot receive effective painkillers, especially when it comes to narcotic drugs such as morphine and its derivatives. There was great publicity in cases in which patients, including children and senile people, literally died of pain, but could not gain access to necessary medications due to bureaucratic obstacles established by the Federal Law No. 3-FZ dated January 8, 1998 "On Narcotic Drugs and Psychotropic Substances" [Cherny, N. I., Baselga, J., De Conno, F., & Radbruch, L. \(2010\)](#) and implementing by-laws.

Thus, on February 10, 2014, Russian Rear Admiral Vyacheslav Apanasenko committed suicide, suffering from severe pain, accompanying a serious cancer disease, and not receiving proper pain relief. [Cherny, N. I., Baselga, J., De Conno, F., & Radbruch, L. \(2010\)](#)

METHODS

The methodological basis of the research consists of general philosophical research methods, such as: analysis and synthesis, deduction and induction, method of hypothesis construction. The specific nature of the studied material determines the use of private research methods: formal legal, systemic structural, and statistical.



The comparative method is widely used, which allows correlating the state of provision of painkillers in the Russian Federation and other countries.

RESULTS AND DISCUSSION

The problems with access to painkillers that exist in the Russian Federation are convincingly demonstrated by the 2010 Report of the International Narcotics Control Board. According to this document, there is an extremely low level of daily medical consumption of opioid analgesics - less than 200 statistical conditional daily doses (SCDD) per 1 million people in Russia, whereas these indicators are much higher in other countries. In the USA - 40 thousand SCDD per 1 million people, in Germany - 20 thousand, in Austria - 16 thousand SCDD. Even in the countries of the former socialist bloc, in which, like in Russia, a traditionally distrustful attitude towards narcotic drugs emerged, such as Hungary, the Czech Republic, and Slovakia, this figure reaches 3 thousand SCDD per 1 million people. [King, R. G. \(1952\)](#)

According to experts, these figures do not indicate that Russian patients are less in need of narcotization, but they specify certain institutional problems with access to narcotic drugs, which are caused by the state anti-drug policy. [Mokri, A. \(2002\)](#)

On the one hand, suicidal messages continue to appear in the media, [I Taylor, A. L. \(2007\)](#). on the other hand, according to a survey conducted by the Association of Professional Hospice Aid Participants and the Vera Charitable Foundation, 37.8% of doctors in Russia had fear of possible criminal prosecution for prescription of pain relief drugs in 2018. [I Taylor, A. L. \(2007\)](#)

Representatives of the medical community have certain grounds for concern. The case of the doctor Khorinyak, who wrote a prescription for a chronically ill patient with some violations of existing rules, received international publicity. The doctor was charged with two corpus delicti: Part 2 of Art. 234 of the Criminal Code (large-scale illicit trafficking of potent substances by prior conspiracy to sell, committed by an organized group) and Part 2 of Art. 327 of the Criminal Code (forgery of a document in order to facilitate the commission of another crime). In this context, the aspiration of the public prosecutor, insisting on the imposition of imprisonment sentence, is quite inherent. Dr. Khorinyak was declared not guilty for the lack of corpus delicti, but the precedent had a wide resonance among the medical community.

Professor Robert Twycross, who headed the World Health Organization (WHO) Center for Palliative Care for many years, fully supported the Russian doctor: “30 years after the first edition of the WHO Guidelines for Pain Relief in Malignant Neoplasms and more than 25 years after the second edition of the Guidelines for the Treatment of Pain in Cancer in Russian, the situation in Russia remains terribly backward in this regard, as a result of which thousands of people continue to die a terrible death every year, and this suffering can be prevented. This is a crime against humanity that shall be corrected without delay!” [Mokri, A. \(2002\)](#)

In connection with the Khorinyak case, the situation with painkillers in Russia was brought to the attention of the world-famous organization for the protection of human rights - Human Rights Watch, which sent an appeal to the Prosecutor General of the Russian Federation Yu.Ya. [Chayka. Talan M.\(2018\)](#)

The main reason for the cautious attitude to narcotic painkillers on the part of state bodies is the strong narcotization of modern Russian society. [Talan M.\(2018\)](#)

Russia carries out a wide range of measures to counter narcotism, including measures to improve criminal liability for committing crimes related to drug trafficking.

Art. 228.2 is of particular interest in connection with our topic. It concerns violation of the rules for the trafficking of narcotic drugs or psychotropic substances, introduced in the Criminal Code in 2003, and establishing the responsibility of a special subject - a person - responsible for complying with the rules for dispensing narcotic drugs, which may include, among other things, a paramedic, a doctor, and a pharmacist.

The objective side of this composition is a violation of the rules for the turnover of narcotic substances (which can be expressed in improper storage, transportation, vacation, accounting) if this has entailed the loss of the narcotic substance. As we can see, the state purposefully creates compounds, the subject of which is a medical worker, whose fault is only in violation of certain procedural rules, and whose actions are in no way connected with the targeted dispensing of narcotic substances in order to make a profit, moreover, this is a crime, according to direct instructions to the Plenum of the Supreme Court, it can be committed even with a careless form of guilt. The result of the state's policy to combat drug trafficking, which is undoubtedly carried out for good purposes, is the current situation when the consumption of narcotic painkillers in Russia lags significantly behind that one adopted in the developed countries; patients suffer from unbearable pain and see suicide as the only solution to the problem, and doctors do not prescribe effective drugs, being under the Damocles sword of criminal liability for violation of legal norms procedural in their nature.

Russia, unfortunately, is not the only country faced with this problem; the experts from the WHO and the International Narcotics Control Board noted that the problems with access to narcotic painkillers arise in many countries, and their main reason is the state policy to limit drug trafficking.

SUMMARY

It seems to us that only two ways out of the current situation are possible: either liberalization of the rules for dispensing narcotic drugs, expressed in a significant simplification of procedural standards; or (this is a less obvious method advocated by us) elimination of crime or elimination of criminal liability of medical and pharmaceutical workers for transferring a narcotic drug to a patient with severe pain for medical reasons, but in violation of established procedural rules.

Simplifying the rules for dispensing drugs at first glance seems like a more logical solution, but it has a number of significant drawbacks today.

Firstly, access to narcotic drugs, in any case, shall not be excessively easy; in this case, we will face a reverse, no less negative situation when medical narcotic drugs literally flood the legal market, which will negatively affect the narcotization of society and public health.

Only a doctor, based on the patient's state of health, shall determine the need for narcotic painkillers and specific dosage.

Secondly, today it is extremely difficult to find a balance between the current Russian situation and the influx of easily accessible narcotic drugs. Serious liberalization carries the above risks, and minor exemptions will not bring the desired effect. The main problem here is that there is a rather complicated normative regulation of the rules for dispensing narcotic drugs based on the Federal Law "On Narcotic Drugs and Psychotropic Substances", as well as administrative acts that enforce it, and an extremely bureaucratic system of bodies and institutions acting on the basis of these legal acts, on the one hand; and the representatives of the medical community, unfortunately, are not able to deal with all the bureaucratic subtleties, on the other hand. In addition, under the current conditions of a shortage of medical personnel (especially far from big cities) and a significant medical load on a particular doctor, medical workers are objectively unable to absorb overloaded regulatory material. These problems need to be solved, but they cannot be solved quickly, while patients suffering from pain require help now, when we do not have time to develop optimal administrative regulations.

Therefore, the most suitable way to facilitate the access of patients with severe pain syndrome to the only effective narcotic painkillers in their case is to eliminate the reason that prevents medical workers from prescribing such drugs, and the pharmacists - from giving them away, that is, to eliminate criminal liability for such acts.

In our opinion, the actions of a medical worker, who prescribed a drug for medical reasons to relieve suffering of the patient, as well as the actions of pharmacy employees, who sell this drug for these purposes based on compassion, are not socially dangerous, as a result of which they cannot constitute a crime.

The main object of crimes related to drug trafficking in public relations in the field of public health. The actions of doctors and pharmaceutical workers related to the provision of painkillers, albeit in violation of irrational procedural rules, but committed for medical reasons, for good purposes, do not harm the health of the population, but rather contribute to its preservation, in fact, this is a type of medical care that they shall render, proceeding from their professional and moral duty. This should be reflected in the current Penal Code, which shall provide medical and pharmaceutical workers with adequate guarantees of their protection against unfair criminal prosecution.

The most suitable criminal law instruments for providing these guarantees, in our opinion, are the institution of circumstances that exclude the criminal nature of an act.

Earlier in our works, we already wrote about a medical error as an unlawful infliction of harm, which we proposed to reflect in the criminal law in the form of such a circumstance that excludes the criminal nature of an act, such as causing harm in the course of professional medical activity.

Continuing the protection line for medical and pharmaceutical workers from unjustified criminal prosecution, along with the norm of persistent medical error, we offer to supplement the criminal code with a norm on another circumstance that excludes the criminal nature of an action (defense): violation of the rules for the circulation of narcotic and potent drugs committed by a medical or a pharmaceutical health worker to reduce the patient's suffering in severe pain.

In our opinion, such innovation will not lead to a worsening of the situation with narcotization of the population and an increase in drug trafficking.

Firstly, we proceed from the presumption of good faith of medical and pharmaceutical workers, who, recognizing their high responsibility to the society and the state, will not abuse the right granted. Moreover, given the example of the USSR, where the access granting procedure to narcotic painkillers to patients with severe pain was much simpler, it was left to the medical personnel, who made decisions based on practical expediency, without fear of criminal prosecution. The level of narcotization of the society, despite this, was incommensurably lower than the modern one.

Secondly, and this clarifies the previous thesis, the number of drugs in the overall structure of drug use is small according to statistics today. Thus, narcotic painkillers occupy an insignificant part in illegal drug trafficking, and the

positive aspects in the form of pain relief in the seriously ill patients outweigh the possible negative effect in the form of a slight increase in their share in illegal drug trafficking.

CONCLUSIONS

Within the framework of this article, we attempted to analyze the reasons for the insufficient provision of patients with pronounced pain syndrome with narcotic painkillers in the Russian Federation. In our opinion, the provision of the right to anesthesia is impeded by the complicated administrative procedure for prescribing and dispensing narcotic drugs, deviation from which threatens the authorized persons with criminal liability. To solve the problem, we offer to exclude the criminal liability of medical and pharmaceutical workers, who provide patients with narcotic drugs for medical reasons but bypassing bureaucratic rules. This innovation will allow ensuring the implementation of the right to anesthesia and alleviating the pain of a large number of people suffering from serious illnesses in a fairly short period.

ACKNOWLEDGMENTS

The work is performed according to the Russian Government Program of Competitive Growth of Kazan Federal University.

REFERENCES

1. World Health Organization. Department of Mental Health, Substance Abuse, World Health Organization, International Narcotics Control Board, United Nations Office on Drugs, & Crime. (2009). Guidelines for the psychosocially assisted pharmacological treatment of opioid dependence. World Health Organization.
2. Lohman, D., Schleifer, R., & Amon, J. J. (2010). Access to pain treatment as a human right. *BMC medicine*, 8(1), 8. <https://doi.org/10.1186/1741-7015-8-8>
3. Frankel, L. H. (1966). Narcotic Addiction, Criminal Responsibility, and Civil Commitment. *Utah L. Rev.*, 581.
4. Cherny, N. I., Baselga, J., De Conno, F., & Radbruch, L. (2010). Formulary availability and regulatory barriers to accessibility of opioids for cancer pain in Europe: a report from the ESMO/EAPC Opioid Policy Initiative. *Annals of Oncology*, 21(3), 615-626. <https://doi.org/10.1093/annonc/mdp581>
5. King, R. G. (1952). The Narcotics Bureau and the Harrison Act: Jailing the healers and the sick. *Yale LJ*, 62, 736. <https://doi.org/10.2307/793503>
6. King, R. (1972). The drug hang-up: America's fifty-year folly (p. 16). New York: Norton.
7. Taylor, A. L. (2007). Addressing the global tragedy of needless pain: rethinking the United Nations single convention on narcotic drugs. *The Journal of Law, Medicine & Ethics*, 35(4), 556-570. <https://doi.org/10.1111/j.1748-720X.2007.00180.x>
8. Mokri, A. (2002). Brief overview of the status of drug abuse in Iran.
9. The World-Wide Case of Pain // *Novaya Gazeta*. [Electronic resource]. - URL: <https://www.novayagazeta.ru/articles/2013/09/09/56260-delo-o-boli-mirovogo-masshtaba> (Access date: 30.05.2019).
10. Brennan, F., Carr, D. B., & Cousins, M. (2007). Pain management: a fundamental human right. *Anesthesia & Analgesia*, 105(1), 205-221. <https://doi.org/10.1213/01.ane.0000268145.52345.55>
11. Golden, D. L. (1971). Criminal Law: Watson-The First Step towards More Humane Treatment of Narcotic Addicts in the Courts of the District of Columbia. *Howard LJ*, 17, 188.
12. Lohman, D. (2009). "Please, do not make us suffer any more-": access to pain treatment as a human right. Human Rights Watch.
13. Lohman, D. (2009). "Please, do not make us suffer any more-": access to pain treatment as a human right. Human Rights Watch.
14. INCB, "Availability of Opiates for Medical Needs: Report of the International Narcotics Control Board for 1995," p. 1 Available at: https://www.incb.org/documents/Publications/AnnualReports/AR1995/AR_1995_E.pdf (Accessed May 30, 2019)
15. INCB, "Report of the International Narcotics Control Board for 1999" Available at: https://www.incb.org/documents/Publications/AnnualReports/AR1999/AR_1999_E.pdf(Accessed May 30, 2019)
16. INCB, "Report of the International Narcotics Control Board for 2007" Available at: https://www.incb.org/documents/Publications/AnnualReports/AR2007/AR_07_English.pdf(Accessed May 30, 2019)
17. WHO, "Achieving Balance in National Opioids Control Policy"; ECOSOC resolution 2005/25 on Treatment of pain using opioid analgesics (36th plenary meeting 22 July 2005) Available at: https://www.who.int/medicines/areas/quality_safety/AccessControlledMedicinesProgr.Framework.pdf(Accessed May 30, 2019)
18. Talan M.(2018), Dunin O. Importancia legal penal de la negligenciamedica//RevistaDilemasContemporaneos: Educación, Política y Valores..Año: VI Número: Edición Especial Artículo no.:18 Período: Diciembre 2018, P. 1-12



19. Shapiro, R. S. (1994). Legal bases for the control of analgesic drugs. *Journal of pain and symptom management*, 9(3), 153-159. [https://doi.org/10.1016/0885-3924\(94\)90124-4](https://doi.org/10.1016/0885-3924(94)90124-4)
20. Mosoiu, D., Ryan, K. M., Joranson, D. E., & Garthwaite, J. P. (2006). Reform of drug control policy for palliative care in Romania. *The Lancet*, 367(9528), 2110-2117. [https://doi.org/10.1016/S0140-6736\(06\)68482-1](https://doi.org/10.1016/S0140-6736(06)68482-1)