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CASE REPORT

PATHOLOGY/BIOLOGY; JURISPRUDENCE

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Ethical and Legal Consideration of Prisoner's Hunger Strike in Serbia*

ABSTRACT: Hunger strike of prisoners and detainees remains a major human rights and ethical issue for medical professionals. We are reporting on a case of a 48-year-old male sentenced prisoner, intravenous heroin user, who went on a hunger strike and died 15 days later. Throughout the fasting period, prisoner, who was capable for decision making, refused any medical examination. Autopsy findings were not supporting prolonged starvation, while toxicology revealed benzodiazepines and opiates in blood and urine. Cause of death was given as "heroin intoxication" in keeping with detection of 6-MAM. Legal and ethical issues pertinent to medical examination and treatment of prisoner on hunger strike are explored in accordance with legislation and professional ethical standards in Serbia. A recommendation for the best autopsy practice in deaths following hunger strike has been made.

KEYWORDS: forensic science, hunger strike, drug abuse, autopsy, prison, human rights, ombudsman

In its long history, hunger strike has been defined on different ways. For the purpose of this presentation, we assume as the most appropriate, the definition provided by Oguz and Miles who describe a hunger strike as "an action in which a person or persons with decision-making capacity (often, but not always, in prison) refuses to ingest vital nourishment until another party accedes to certain specified demands" (1). Similar definition of the phenomena is underpinned by Declaration on Hunger Strikers (Declaration of Malta) (2).

It is important to understand that food (and fluid) refusal by prison inmates is a communication that could be seen as manipulative behavior. As such, it may be a political statement, a method of exercising control or reducing tension, a variant of self-harm, a personal statement of distress, or part of a mental disorder (3). Refusal of some or all forms of nourishment or hydration is conditional and related to request passed to another party (e.g., prison authority) at the beginning of strike (4).

Most hunger strikes include the ingestion of some water or other liquids, salt, sugar, and vitamin B1 for a certain time without asserting intent to fast to death (1). However, prolonged fasting has a potential to deteriorate striker's health. As reported by Faintuch and co-workers, based on observation of a group of eight hunger strikers, who lost approximately 18% of body weight while refusing alimentation for 43 days, no major problems were noted (5). At the other end, it is considered that death usually occurs in normal-weight mammals when there is loss of 40–50% of initial body weight (6). Although fatal outcome of hunger strike is not frequent, the power of the hunger strike comes from the striker's declared intent to die slowly in public view if injustice or condition taken by him/her as a basis for protest will not be reconsidered by the appropriate authority (7). Three elements—fasting, voluntariness, and a stated purpose, should necessarily be identifiable in a prisoner declaring a hunger strike (8).

The ethical issue about hunger strike is a subject of many conflicting opinions discussed by the authorities in all over the world (9). Doctors in these circumstances might be in a tricky situation. Fundamental to doctors' responsibilities in attending a hunger striker is the recognition that prisoners have the same right as any other patient to refuse medical treatment with more complex question on what a physician should do after a competent hunger striker becomes incompetent having in mind that the striker will die or sustain permanent damage without food, while it is not likely that his or her demand(s) will be met (10,11).

Present study came out as a result of cooperation of medico-legal experts and State Ombudsman ("Protector of Citizens") who was retrospectively assessing the case. None of medico-legal experts involved in this study were involved in investigation of the case and medico-legal autopsy. We aim to examine circumstance of food refusal by the prisoner, response of prison health service, in particular their legal and ethical duties, as well as to comment on medico-legal investigation into death of the prisoner on hunger strike.

Case Report

Background Information

Personal medical record of the prisoner as well as information collected during the Ombudsman office representatives was used for this scrutiny.

A 48-year-old male sentenced prisoner with a history of severe trauma 16 years prior to imprisonment, when, because of a bomb

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explosion he underwent amputation of entire right lower extremity, mid left femoral amputation, as well as mid right forearm amputation. Because of the extensive limb loss, he was restricted to a wheelchair. At the time of imprisonment he was known to be intravenous heroin user of 1 g daily for at least 1.5 years, and was hepatitis C virus positive. While in the prison, during 29 months, he has had 56 on-demand medical checkups. Most of the checkups were by general practitioner, related to unspecific gastrointestinal complaints and respiratory symptoms. He was frequently examined by psychiatrist for medical problems related to heroin addiction and dissocial personality disorder (ICD-10; F60.2). The regular treatment regime includes anti-depressants (Mianserin) and benzodiazepines (Diazepam and Midazolam). Human immunodeficiency virus and hepatitis B virus tests were negative. Last medical examination was about 2 weeks before he declared hunger strike.

According to the prison authority classification, he was in semi-open, nonrestrictive regime, eligible for intermittent half-day prison leave. Upon arrival from a leave, a suspicion came from prison guard that he is smuggling drugs in electric wheelchair. With an order, search of wheelchair and its electrical charger revealed drugs and mobile phone charger, which are forbidden by prison rules. Fortnight following the searches, the prisoner declared a hunger strike, blaming prison authorities that his wheelchair was damaged during the prior search, and demanding it's repair on expense of the prison authorities. Thirteen days from the beginning of voluntary fastening, the authorities accepted to send wheelchair to the service outside of the prison. However, strike was continued awaiting repaired wheelchair to be returned from the service.

During the hunger strike, he continually refused medical examinations that were offered on a daily base. According to the statements of prison inmates, and prison guard reports, there were no major disturbances of striker's health condition, as well as mental alterations noticeable for lay people.

In the morning on the 15th day of hunger strike, the striker was found unconscious in the cell and brought to the prison hospital where he was pronounced dead on arrival.

Postmortem Findings

Medico-legal autopsy was performed in the next day by the university-based medico-legal institution in one of the major cities in Serbia, where the correction facility is located as well. A full autopsy report was available for the review, but no photographs from autopsy were attached, nor any remark made whether they were taken during the autopsy or not.

External Examination

External body parameters were incomplete in autopsy report. Body weight was not provided, while height was measured with constrain because of prior lower limbs amputation. Body appearance was given descriptively as "medium osteo-muscular built" and "average nourishment." No particular notes on eyes appearance (e.g., eyes sunken), orbital margins, nose tips, cheeks, supraclavicular fossae and intercostal spaces, the ribs and abdomen appearance were noted. With the exception of skin paleness, there were no remarks provided on skin turgor, dryness, and other features usually associated with prolonged deprivation of food and/or fluids (e.g., laxity, wrinklesness, thinning, lack of elasticity, pigmentation, etc.). Except a small abrasion, measuring 30×15 mm, on the right brachial region, no external traumatic lesions, nor decubital ulcera were recorded. Numerous facial, chest, and left forearm scars were present. Scaring subsequent to medial laparotomy and appendectomy was noticed. There were plenty of skin tattoos, as well.

Internal Examination

No effusions in pericardial, pleural or peritoneal cavity were present. Except subepicardial fat measuring 12 mm and infiltrating myocardium, as determined on histology, no comments on subcutaneous and internal fat stores (e.g., omentum, mesentery, and perirenal area) were provided.

In abdominal cavity, extensive adhesions were present in relation to prior surgery. Stomach contains a small amount of fluid, and its layers were thin. A small-quantity "normal intestinal content" was present along intestinal tract; thinning and translucence of intestinal walls were not present. Spleen has been removed surgically, while accessory spleen was present. Fibrotic changes of pancreas and nodular hepatic cirrhosis were present. Gall bladder was not distended. Brain and pulmonary edema were both noted on macroscopic and microscopic examination. Other macroscopic and histopathologic findings may be considered as normal. None organ weights are provided.

Toxicology

At postmortem samples of blood and urine were collected for toxicology. Gas chromatography with mass spectrometry detection (GC/MS) analysis of blood sample revealed 0.210 mg/L of Diazepine, 2.510 mg/L of Carbamazepine, 0.035 mg/L of Codeine, 1.070 mg/L of Morphine, and 0.035 mg/L of 6-monoacetylmorphine (6-MAM). Alcohol was not detected in blood sample. Urine readings were 0.072 mg/L of Codeine, 1.553 mg/L of Morphine, and traces of Diazepame and Carbamazepine. 6-MAM has not been detected in urine sample.

Cause of Death

Cause of death has been stated as heroin intoxication, and severe hepatic cirrhosis was listed as underlying cause of death.

Discussion

In different countries, legislation and prison rules are containing provisions set to handle hunger strike among prison inmates. This legislation also defines in unspecific terms the duties of prison medical staff to care for the mental and physical health of the prisoner.

Law on Enforcement of Penal Sanctions in Republic of Serbia determines that prisoners must not be medically treated without having their explicit consent. Forced feeding of prisoners is prohibited. However, if refusal of medical treatment or voluntary deprivation of food seriously impairs prisoner's health and endangers his or her life, medical treatment shall be carried out as determined by medical doctor, in accordance with general medical regulations. There is a duty of prison doctor to provide daily examination of a prisoner who refuses to ingest food and/or to take fluids (12). Health care legislation in Serbia recognizes patient's right, if competent, to refuse medical treatment even if in life-threatening situation. The only restriction of patient's right to refuse proposed medical treatment, that *inter alia* includes medical examination, exist0073 when rejection of medical treatment may endanger the life and health of other people (e.g., when contagious disease is suspected).

Facing such decision, medical doctor should seek patent's written statement and keep it in medical records. If patient refusing medical treatment is not willing to provide doctor with written statement, doctor has to make appropriate note in patient's medical record (13). The patient also has the right to authorize the person who shall be notified by the doctor if the patient becomes unable to consent; such person may consent for the treatment on patient's behalf. Professional Code of Ethics tolerates forced treatment and/or feeding of patients in detention only if they are not capable for consent whereas health legislation determines that these measures are acceptable exceptionally in medical emergency situation, if in accordance with medical ethics.

Assessment of person's ability to make an informed decision to go on a hunger strike is a millstone of physician's duty before a strike is underway (1). Such evaluation should look into person's general capacity for any serious decision, and in particular, following proper informing of the patient on the health risks of hunger strike and it's potential for lethal outcome, on patient's competence to make a decision for hunger strike. In the presented case, the hunger striker was examined approximately 2 weeks before he went on strike, not found to be incapable for decision making. There were no indications in his medical history for 29 months of imprisonment of serious psychiatric illness that has a potential for rendering decision incapacitation. Although medical examination of prisoner who is on hunger strike is mandatory by law in Serbia (12), and it is in accordance with best medical practice, the prisoner repeatedly refused any medical examination. Such refusal made prison doctor to balance between two different obligatory measures—the law and the ethical standards (12–15). From prisoner's medical records, it is clear that no medical examination has been made during the hunger strike. This may be justified by the fact that no significant deterioration of health and/or incapacitation was present, and prisoner/patient competently did not consent for medical examination. Making judgment between legal requirement to examine prisoner on hunger strike (12) and ethical standard set by Serbian Medical Chamber (15) revealed that no medical examination or treatment will be initiated without patient's consent [Patient's Consent (Article 45) "Providing the patient with full information on importance of diagnostic, therapeutic and follow-up procedures for his/her condition, doctor have to obtain patient's consent… Patient has the right to accept or reject any outpatient or inpatient treatment upon being appropriately informed by the physician. Consent or refusal may be expressed orally or in writing. Patient has a right to refuse examination or treatment, even when it endangers his/her life… If the patient is vitally affected patient is unconscious or otherwise unable to express his/her will and consent, the doctor may provide emergency treatment either on his/her own decision or having obtained a written consent of patient's close relative"], prison doctor choose professional ethical standards. In our opinion, a prisoner on hunger strike who was not severely impaired nor his life was endangered, kept decision-making capacity throughout the fasting period. Therefore, his repeated refusal for medical has to be considered as appropriate. There were no emergency medical conditions that will render prison doctor to act even if medical treatment is refused by the patient. Although prison doctor breach a legal requirement to examine prisoner on hunger strike, this practice may be granted as conscious objection to violate patient's rights. Serbian Act on Health Protection gives a possibility to medical doctor to conscious objection except in providing emergency medical care.

There are several reviews available on postmortem findings in deaths because of hunger strike (16,17). Interpreting autopsy findings in the present case, an assumption could arise that the prisoner who died 2 weeks since he started hunger strike in fact was not fasting. This opinion is supported by the fact that cachexia was not present, nor other features of prolonged starvation and/or dehydration were noticeable on external examination. Furthermore, on internal examination, gallbladder distension and intestinal changes were not present. Reduction in body subcutaneous and internal fat stores was not determined, too. Given postmortem themselves were not supporting prolonged starvation. However, autopsy itself was not of a good quality because body and organ weights were not measured. These measurements are necessary for calculation of body mass index and determination of chronic starvation that usually reduces weights of organs, except the brain (18).

Toxicological analyses revealed psychoactive substances—benzodiazepines and opiates in blood and urine. The pathologist decided to give a cause of death as "heroin intoxication" in keeping with detection of 6-MAM along with other opiates. It may be argued that, having determined benzodiazepines in blood, cause of death could be given as "mixed drug toxicity". However, it is clear from the result of death investigation that in the presented case, the prisoner on hunger strike did not pass away from starvation, but from drug intoxication. There are occasional reports from different countries on prisoners dying because of drug overdoses (19,20). In the presented case, the prisoner has had a history of intravenous drug abuse before incarceration. Many prisoners come to penal institutions with established drug habits (21). According to results of multiple studies, imprisonment is a common event for many intravenous drug users (22). Illicit drugs are available in prisons despite the sustained efforts of prison systems to prevent illicit drug use by prisoners—by doing what they can to prevent the entry of drugs into prisons, tightly controlling distribution of prescription medications, and enforcing criminal prohibitions on illicit drug possession and use among prisoners (23).

Finally, it is important to note that forensic medical experts came across this case in capacity of State Ombudsman consultants. Preventive mechanisms for monitoring institutions wherein persons deprived of liberty are confined with mandatory involvement of medical doctors in it have been recently established by Ombudsman of Republic of Serbia ("Protector of Citizens") (24). Similar experiences on cooperation of forensic medical experts and Ombudsman exist in other countries, as well (25).

Conclusion

This presentation adds to the medical literature a hunger strike-case of a prisoner who has had a history of intravenous drug abuse, with fatal outcome not related to starvation, but caused by intervening drug intoxication. During the declared hunger strike, prisoner, with no apparent signs of incompetence, repeatedly refused any medical examination. Such development obviously generates complex and difficult problem to prison doctor to balance between patient's refusal of examination, and legally determined obligation for daily medical checkups of prisoner on hunger strike.

Although the attending pathologist had relevant circumstantial evidence at the time of autopsy, postmortem examination shows gaps in documenting of positive or negative findings in the prisoner who has been known to be on hunger strike prior to death. Therefore, it is necessary to generate recommendation for the best autopsy practice in deaths following hunger strike of prisoners and other persons deprived of their liberty (e.g., psychiatric patients, asylum seekers, etc.). Close cooperation of Ombudsman and forensic medical experts could be of benefit for protection of certain groups whose liberty is limited and human rights are potentially violated.

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