

"Collision of Lives" in the Conditions of the Coronavirus Pandemic

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ABSTRACT

Attention is drawn to the fact that today there are many situations when one has to sacrifice one person for the sake of saving others, which is called "collisions of lives". The current state of medicine in the context of the spread of COVID-19 infection has given rise to another of these options. The sharp spread of morbidity has created circumstances of the availability of limited resources with increased needs for them. This puts doctors in a position where they have to choose between the lives of patients. The article is devoted to the analysis of such cases. The study analyzed the opinions of scientists, documents of professional communities on the actions of doctors when providing assistance to patients with coronavirus. Examples of judicial practice and the results of a sociological survey of doctors are given. The purpose of this article is a legal analysis of situations of collision of lives that have arisen in the context of the coronavirus pandemic.

Keywords: Collision of lives, confrontation of lives, emergency, pandemic, COVID-19, coronavirus.

1. INTRODUCTION

The problem of saving a person's life at the expense of another person's life in Russian criminal law is called the collision of lives [15]. It has occupied the minds of philosophers and lawyers for more than one century. The resolution of such situations involves the relationship of two different lives, the establishment of legal identity or difference between them. This means that it is needed to compare the lives of a young man and an old man, a prominent scientist and a criminal, etc. This means that in such a comparison of lives, it is necessary to be guided not only by practical considerations, but also by moral categories and socio-psychological attitudes.

At the level of domestic relations, opinions are not excluded that preference should be given to a person who can bring great benefit to society. Therefore, there will certainly be those who consider it possible to sacrifice a person who does not have a place of residence for the sake of saving a promising specialist. Despite the seeming banality of this question for lawyers and the obviousness of the answer that "lives are equal", the development of social relations forces us to turn to this issue again.

Scientific and technological progress has revealed new areas of life, in which such a question becomes one of the most urgent. Today, these include, for example, the sphere of countering terrorism [7]. Thus, a head of the counter-terrorist operation, hypothetically, will have to make a choice between saving the lives of more people and destroying, for example, an aircraft captured by criminals, which is heading for a densely populated area of the city [14].

The use of unmanned vehicles, which until recently seemed like science fiction, has already become a reality. This, in

turn, poses a question for software developers: who should be sacrificed in a critical situation - a passenger of such a car crashing into a wall, or a child who suddenly ran out onto the roadway? [15].

The problem of collision of lives has long been known in the field of medicine [13, 19]. It is doctors who more often than others have to face the need to choose between the need to save many people and the real opportunity to do it for a smaller number. However, the coronavirus infection, which began to spread in China at the end of 2019, forces scientists to re-consider the philosophical, legal and bioethical problem of choosing between people's lives.

2. RESEARCH METHODS

The research methodology was based on comparative legal, logical legal and specific sociological methods. The first was used when comparing regulatory legal acts of different states, foreign judicial practice, as well as scientific publications on the topic under consideration.

The logical-legal method was used to determine the current state of the problem in the context of the coronavirus pandemic. This made it possible to identify the most common situations in which it was necessary to make a choice between patients.

The specific sociological method made it possible to obtain the data of empirical research. The opinions of practicing doctors were also studied. The results obtained served as the basis for the conclusions and proposals made.

3. RESEARCH RESULTS

In November 2019, a previously unknown pneumonia began to spread in the People's Republic of China. On January 30, 2020, WHO recognized the outbreak of coronavirus infection as a public health emergency of international concern. It was established that the causative agent was a coronavirus, which was named SARS-CoV-2 (later the coronavirus infection was renamed to COVID-2019). On March 11, 2020, WHO announced that the spread of the disease had become a pandemic.

In fact, the medical community is faced with a lack of generally accepted effective treatments. Information on the clinical indicators of the disease is regularly updated and clarified. Conflicting data appears in different sources. This means that there is no completely reliable information about all its immediate and long-term consequences. Based on the published information, the nature of the danger of this disease is that it entails harmful consequences for human health and life. At the same time, mortality, according to various sources, ranges from 2% to 4.5% [17]. These numbers are not the highest compared to some other infectious diseases such as tuberculosis.

The degree of danger of COVID-2019 is characterized, first of all, by the intensity of the spread of the disease. At the beginning of autumn 2020, more than 25 million cases of the new coronavirus infection were detected in the world, of which about a million died. In Russia, these figures were about a million and 17 thousand cases, respectively.

Such an intensity of the spread of the disease is a disaster for almost all states, since in most of them the health care system is not adapted to the simultaneous treatment of such a number of patients. All this is happening in the absence of vaccines, sufficiently effective medicines and the necessary immunity in the majority of the population. In this case, the average time from the onset of symptoms to clinical recovery is 6-8 weeks [4]. These conditions lead to a mismatch between the number of patients and the resources available for their treatment.

The events taking place in the world related to the spread of the disease, WHO recommendations and foreign experience in responding to the threat, contributed to the adoption by the state authorities of the Russian Federation of a number of regulations governing preventive measures and countering the impending danger [11]. These include the Decree of the Government of the Russian Federation dated January 31, 2020, which included the 2019-nCoV coronavirus infection in the list of diseases that pose a danger to others [16].

Thus, it is obvious that the COVID-2019 pandemic, from a criminal-legal standpoint, is objectively an apparent and real danger, directly threatening law-enforced interests. This means that it can be recognized as a source of extreme necessity and is the basis for causing legitimate harm [22]. International experience demonstrates the prevalence of such situations.

For example, the extraordinary situation allowed doctors in Italy to make a choice between patients by age. For example, the Mayor of Bergamo said that in some cases the discrepancy between resources and a huge influx of patients

forces doctors to decide not to apply effective treatments for "some very old patients", in fact, leaving them to die [5].

Of course, one life is always equal to another from the standpoint of jurisprudence. Any other officially approved approach would contribute to the restructuring of society and the destruction of the existing system of law. Naturally, this is inadmissible.

Thus, if we start from the principle of equality of lives, then the situation when, when deciding on a choice between two patients, to sacrifice one life for the sake of saving another, is resolved quite simply. The harm in such cases will be equal, that is, one life is saved at the expense of another. The current criminal legislation of Russia considers such actions unacceptable, since the extreme necessity presupposes infliction of less significant harm than the prevented one.

However, does this rule always apply? Is it unshakable? Is criminal law not detached from reality? In modern criminal law doctrine, there is no generally accepted point of view on this issue.

Thus, representatives of the so-called quantitative approach believe that such actions should be recognized as permissible [9, 10]. Other position is based on I. Kant's ideas. He defined extreme necessity as "coercion without right". The actions of a person surviving at the expense of the death of another, he believed, are not punishable due to the impotence of the law in this case [12]. Partisans of the Kantian view on the solution of the problem under consideration believe that mathematical calculation in such cases is inappropriate [20, 21]. Thus, to date, in the theory of criminal law, there are two opposing points of view on the criminal-legal assessment of the "collision of lives".

In this regard, a natural question arises: how, in the presence of such uncertainty in theory and practice, should a doctor, faced with a choice, act? The layperson in the field of law must make a legal decision - who will live and who will die. The absence of any guidelines in this matter unfairly imposes a colossal responsibility on physicians.

The result of discussions on this issue in some countries has become the development of ethical recommendations (rules, guidelines, etc.) for the actions of doctors in a pandemic. As a rule, these documents are the generalized opinion of the professional community. They do not have a characteristic of normativity and are of orienting importance for doctors. However, most of them address three groups of issues. These are, firstly, issues related to the provision of treatment. Secondly, they reveal the procedure for making decisions. And thirdly, describing the possible responsibilities of medical professionals.

Almost all the recommendations draw attention to the fact that in a pandemic, when the distribution (triage) of patients in medical institutions, difficult situations are possible. They involve the need to decide who should receive treatment immediately in a resource-limited setting. In other words, the number of people in a life-threatening condition will be greater than the available opportunity to treat simultaneously. All recommendations indicate that in these conditions the rule should not be applied - "whoever asked for help first, received it first".

Not having the goal of conducting a detailed analysis of these documents, let us turn our attention to their provisions, which formulate models of doctors' behavior in the conditions of "collision of lives". For example, let's consider the recommendations published in three European countries (England, Germany and Spain), as well as the similar regulations applied in Russia.

England. In March 2020, the British Medical Association published a "Guidance for GPs on COVID-19" [1]. It states that priority should be given to those patients whose condition will be most urgent, least difficult, and who are likely to live the longest. Thereby increasing the social benefit in terms of reducing mortality and morbidity. Priority decisions will depend on the relationship between resource availability and demand. At the same time, it is emphasized that it is unacceptable to make such decisions based on age. Although this indicator can affect the general health of a person, reducing his/her chances of survival. In other words, it is permissible to cancel the treatment of a person who can no longer benefit from it. However, this is only possible to achieve the main goal - to provide the treatment he/she is receiving to another person. It appears that, in accordance with the GP Guidelines, it is ethical and legal, following an appropriate prioritization policy, to refuse treatment to a more serious and almost hopeless patient, giving priority to the person with a greater chance of survival.

Germany. On March 25, 2020, several professional associations of doctors adopted and published "Recommendations on the allocation of resources in emergency situations and the use of intensive care in the context of the COVID-19 pandemic" [2]. They draw attention to the fact that in conditions of a lack of resources, it is necessary to make a choice of which of the many patients should be treated in intensive care units. Prioritization should be based on the criteria of the clinical outlook for success. This does not mean "the best option", but rather giving up treatment for those who have little or no chance of success ("den Verzicht auf Behandlung derer, bei denen keine oder nur eine sehr geringe Erfolgsaussicht besteht"). At the same time, the recommendations draw attention to the inadmissibility of making a decision on the priority of treatment only on the basis of the age or social criteria of the patient.

Spain. In March 2020, the Spanish Society of Intensive Critical Medicine and Coronary Units (SEMICYUC) also issued Ethical Guidelines for Intensive Care Decisions in the Exceptional Conditions of the COVID-19 Pandemic Crisis [6]. Among the general provisions of this document, attention should be paid to the recommendation of the need to proceed from the principle of maximum overall benefit ("maximización del beneficio global") in the allocation of patients. Among the criteria that should be taken into account when making decisions about the use of limited resources is the age and social significance of a person (Tener en cuenta el valor social de la persona enferma). Therefore, between two similar patients, priority should be given to the person with the highest life expectancy, adjusted for its quality.

Among the Russian regulatory legal acts, we were unable to establish recommendations or rules specifically dedicated to the actions of doctors in the distribution of patients in the context of the coronavirus pandemic. However, there are general rules on this issue. The most commonly used division into three groups, depending on the urgency of assistance:

1. Urgent care - patients' lives are at risk.
2. Emergency help - life is not in danger yet.
3. Non-urgent help - help provision may be delayed [18].

To clarify the attitude of Russian doctors to the problems considered in this article, we conducted a sociological study, during which, from May to August 2020, 71 doctors of medical institutions from four constituent entities of the Russian Federation were interviewed. Following responses were received to the question in the form of a simulated situation - "Which of the two seriously ill COVID-19 will you assign the use of the necessary, but only artificial ventilation apparatus?". Thus, about 76% said that they would save first of all the patient, who has more chances of recovery; slightly more than 17% of respondents took the opposite position and said that they would treat the most seriously ill patient first; about 7% of specialists answered that they would prefer a younger one.

4. DISCUSSION

The received research results demonstrate the rather important fact. It consists in the fact that the medical community of at least three European states has shifted the balance towards the utilitarian goal of maximum benefit for the whole society in the issue of choosing between the life of one person and the death of another person. Published documents recommend to actually sacrifice the patient who is less likely to recover in order to save the patient who is more likely to recover. As for Russia, it shall be emphasized that there is no public discussion of the problem under consideration in the information sphere. At the same time, among the overwhelming majority of domestic medical workers, there is a widespread opinion similar to the ideas laid down in the Western European recommendations.

However, such conclusions are not shared by everyone. Legal doctrine is in no hurry to recognize the lawfulness of refusing to treat one person in order to provide it to another. For instance, J. Hurford believes that the actions described in the English Manual can be considered murder [3]. This point of view generally coincides with the opinion of some Russians [13, 20]. It cannot be said that Russian legislation also excludes the criminality of an act in such cases. Article 39 of the Criminal Code of the Russian Federation on extreme necessity does not allow sacrificing one good for the salvation of an equivalent one. However, the events taking place in the world, the opportunity to assess the situation not abstractly, but to become almost a direct participant in it, provide the reason, at least, to doubt the steadfastness of such a position of lawyers.

5. CONCLUSION

Thus, an analysis of the criminal law doctrine, published recommendations on the actions of doctors in the context of the COVID-19 pandemic, allows us to draw several conclusions.

Firstly, the coronavirus pandemic announced by WHO in early 2020 is a source of danger, for the elimination of which situations of forced harm to objects of criminal law protection are possible. Among such situations is the collision of patients' lives, in which doctors, in conditions of limited resources, must make a choice between the life of one patient and the death of another.

Secondly, the professional medical communities recommend that physicians in critical cases be guided by the principle of utilitarianism, which consists in obtaining the greatest benefit for the whole society. In general terms, this means that in case of two patients who are approximately in a similar position, the preference in treatment will be given to the one who has a better chance of recovery. At the same time, the current Russian criminal legislation and the opinions of legal scholars do not recognize such actions as legitimate. These circumstances indicate the presence of significant contradictions, requiring a revision of the prevailing views on the problem of collision of lives.

Thirdly, the events taking place in the world related to the spread of the coronavirus pandemic demonstrate to humanity that other, previously unknown sources of danger may appear in the future. This, in turn, requires not only material and organizational and managerial preparedness, but changes in the current legislation to be made as well. First of all, this concerns the norms of criminal legislation on extreme necessity, which does not provide answers to many questions. In fact, there is no direct regulation of the cases in question in the legislation. This puts individuals acting in the public and state interests at risk and under threat of criminal liability.

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