

Medical confidentiality in general and that after the death of the patient

Prof. Dr. Bardhyl Çipi

Faculty of Medicine, University of Medicine, Tirana

ABSTRACT

The preservation of secrecy occupies an important place for the respect of freedoms and human rights, which is also foreseen in the Albanian Constitution. In the Albanian Penal Code, several articles have been presented that punish the violation of the confidentiality of correspondence etc. This principle is also very important in medicine. In fact, in the last years, the risk of its violation has become greater due to the development of electronic media, computers, faxes, voice messages etc. Under these conditions, a new medical legislation has begun to be developed in many countries, for these issues. But the field of medical confidentiality after death is not studied enough. It is important to know the different aspects of this issue in our country, because recently there have been many publications in our country, accompanied by discussions and criticisms, especially regarding the illnesses and deaths of some public figures. In this presentation, among others, some ethical, philosophical and legal data on this issue are analyzed, which are mainly related to the interests of the deceased person, the time that has passed since death, the negative impact of not saving medical data on his memory, followed by the presentation of some well-known cases etc. In conclusion, it is emphasized that medical confidentiality after death, especially that of a public person for our country, is a very delicate issue that requires great care in cases of its announcement.

Keywords: Personal privacy, medical confidentiality, medical confidentiality after death, Albania.

1. Introduction

The preservation of secrecy is a very important issue for the respect of freedoms and human rights, which is foreseen in the Albanian Constitution, according to which non-interference outside the law in the private life of a person is guaranteed (Article 35) (Elezi,2002).

The Albanian Penal Code contains several articles that punish the dissemination of personal secrets (Article 122), unjust interference in private life

(Article 121), obstruction or violation of confidentiality of correspondence (Article 123) etc. (K.Penal i Republikës së Shqipërisë, 1995).

This principle is also very important in medicine, foreseen in the Code of Ethics and Medical Deontology of Albania. In fact, in the last years, the risk of its violation has become greater due to the development of electronic media, computers, faxes, voice messages etc.

Under these conditions, a new medical legislation has begun to be developed in many countries, for these issues. But the field of medical confidentiality after death is not well known. Its various aspects are important to know in our country as well, because recently there have been many publications, accompanied by discussions and criticisms, especially regarding the illnesses and deaths of some public figures.

2.General knowledge on medical confidentiality

Is it permissible to publish everything about medical studies that are carried out on the human body? Can all medical records on illnesses and cause of death be disclosed by doctors? Should efforts be made for the post-mortem disclosure of data on the human body, as a result of criminal acts or suspicions of their commission? Is it possible that the application of the principles of medical ethics: confidentiality, consent, respect for the human body after death are conditioned by the time period that has passed? (Charlier,2014).

Recently, these questions have started to be asked in our country, especially in relation to medical records and the death of public figures of the previous regime, such as of Enver Hoxha, Mehmet Shehu, Nako Spiru, etc., or those persecuted and killed in that period.

To understand them, the important principle of medical confidentiality must first be analyzed, which was transformed from a moral obligation into a legal obligation and finally as one of the fundamental human rights (Çipi, 2015). According to this principle, in order to protect the interests of the patient, the information that the doctor receives from him during the exercise of his medical practice, should not be shown to other persons or disseminated. In the absence of a guarantee that his secret will be kept by the doctor, the patient can keep hidden important data that can negatively affect his treatment, or that of other people(Çipi, 2005).

In fact, the concept of medical confidentiality, in many countries, especially the Western ones, has a close connection with that of the privilege of the doctor-patient relationship, a narrower concept than the confidentiality of the patient's rights. According to him, the treating doctor should not disclose the data he receives from the patient to another party and should not use it against the patient in court or other legal processes (Robitcher, 1968; DeWitt, 1959).

Recently, the issues of medical confidentiality are receiving more and more attention regarding their ethical and legal aspects. The great development of electronic media has changed the meaning of the traditional transmission of medical information. The use of mobile phones and today's electronic devices: computers, faxes, etc., have created the possibility of unintentional violations of medical confidentiality. Electronically sent voice messages can be heard by other people except the patients. Likewise, the computerization of medical records, which has many advantages, risks violating their confidentiality.

For this, in many countries, a new medical legislation has been elaborated for the protection of confidentiality in various circumstances (Berg,2001).

3. Medical confidentiality after death

Medical confidentiality after the death of the patient and that for public figures constitutes a special field, not much studied.

In this study, some of the main aspects of this issue related to the concept of preserving or not preserving medical confidentiality after death, the philosophical and ethical arguments of these attitudes, the circumstances in which this secrecy is not preserved, the impact of the time that has passed since death, who will have the right to keep the medical confidentiality after death or not, etc.

The preservation of medical confidentiality after death is necessary to protect the individual, either for his private life or his social position, due to the damage that can be caused to the patient, mainly moral, in the event that these medical data were to be disclosed (Berg , 2001).

Today's concerns about confidentiality mainly concern the issue of when a doctor discloses a venereal (sexually transmitted) disease, or that the person has been an alcoholic or other information that may be disparaging to the public, or whether the disclosure is made to was defended against a defamation action against the patient.

Likewise, blood types in themselves may not be information to be kept secret, but in cases of paternity issues along with DNA, they can be very important. For example, in cases of identification of the corpses of the Srebrenica massacre, carried out by Serbs in Bosnia, through comparative examination of DNA data with that of their living parents, found that in some cases the father of a victim was not the real biological father. This finding was necessary to keep secret to avoid serious family conflicts later. Or in the case of people affected by HIV/AIDS, this disease must be kept a secret even after their death (Berg,2001).

Failure to maintain medical confidentiality after death can occur because doctors have not made any promise to their patient to preserve medical records after his death. Indeed, despite this being foresee in ethical codes, few physicians have

shown an obligation to maintain the confidentiality of individual patients, and even less to postmortem medical secrecy.

According to foreign medical literature, the protection of medical confidentiality after death is dependent on the interests that the deceased had before death to preserve it.

So, if non-maintenance of post mortem medical confidentiality will be in favor of the deceased person, this may not be objected to (Berg,2001).

Philosophical views about interests after the person's death (Berg,2001).

It is in the interest of the dead person that the information be preserved, if its publication after death would harm him, e.g. from not keeping the promise to maintain medical secrecy, which may affect the memory of the person when he was alive, or from defamation that may cause him moral damage.

Indeed, the dead man, whose consciousness has disappeared, has no need to have interests. But, when he was alive, he had interests that should continue to be preserved even after his death. Even the relatives of the deceased have interests, which are determined by the fact that the deceased lives in their memory. Thus, the damage to the memory of the dead by not keeping the medical confidentiality by the doctors, will harm the interests of the living people to preserve in their minds the virtues of the dead person.

It may happen that for a man who during his life has been very correct, the release of confidential medical records, changes the opinion of all his acquaintances so that they now understand that he was a flawed man.

From the philosophical and ethical point of view, there are two attitudes towards the preservation of confidentiality after death (Berg,2001):

- the first attitude, according to which, the preservation of confidentiality after death should be much stronger, have an absolute character, compared to medical secrecy before death. This is because the person who has died now no longer has the opportunity to approve this breach of confidentiality, or to protect their reputation or identity.

- the second attitude, according to which the dead person's interest in maintaining his confidentiality will be less than when this person was alive. This, for the reason that the person who has died cannot be harmed, in the sense that he no longer feels pain, happiness or other emotions. While in the living person, failure to maintain confidentiality, e.g. the medical one will harm him and make him suffer from this action, for the consequences of this disregard for his wishes.

Some other situations of failure to maintain medical confidentiality after death (Guidance and advice etc., 2021):

- cases of denunciations for the medical follow-up of the person before death,

- in cases of opposition to wills,
- when medical documents from insurance companies are requested by relatives, these are necessary for financial benefits, which are determined by the medical cause of death of their man who has been insured in these companies,
- the need of relatives to be familiar with the diagnoses of inherited diseases of the deceased person, in order for them to take medical measures for their prevention,
- the interest of studying the progress and distribution of various diseases (non-maintenance of confidentiality is only for the researcher and not for other persons),
- publication interest e.g. for events with multiple deaths from specific diseases, or when the dead person is a public figure, or the detection of murders and criminal events etc.

The effect of the time that has passed since death on the preservation or not of medical confidentiality (Berg, 2001; Charlier, 2014).

Over time, the memory of the dead that is stored in the mind of a living person begins to fade. Likewise, the interest of the deceased's family members will, over the years, decrease. In this case, it should not be forgotten that the memory of the people who knew the deceased is much more important than what is left in subsequent generations. So, the protection of medical confidentiality after death will diminish over time, until its complete disappearance.

In foreign literature, there is a view according to which confidentiality should no longer be maintained when a time has passed, corresponding to one or two generations after the person's death.

In French legislation, this time has been 150 years. Then it is reduced to 120 years and the trend is that this time will decrease even more. But it is emphasized that even with the passing of the necessary time, this does not mean that the information will become public (Charlier, 2014). This difficulty to keep or not this secret may also occur because the doctors of this case may have died over time, or the medical documents of this case have been destroyed.

In practice, there are cases of our study of the medical or forensic aspects of corpses or previous skeletal remains. They were not "patients", according to the literal meaning of this term. In medical legislation in general, the preservation of medical secrecy both during life and after death usually rests with the patient's treating physician.

So, in these cases, these will be considered as "dead persons", without life, but they must be respected. Therefore, in the publications of the examinations of these cases, at least their anonymity should be preserved (Charlier, 2014).

Who has the obligation to maintain medical confidentiality or not after death?

This obligation belongs primarily to the treating physician of the patient who died; but this can also be for the doctor who performed the autopsy of the dead person, or other medical personnel (Berg, 2001).

The request for not keeping the medical secret can be made by the relatives of the person who died, or by the person himself before he died.

The disclosure of the medical confidentiality can also be carried out by the doctor in the previously mentioned circumstances, such as in cases of medical information requested by the media, bibliographers for general interests, clarification of criminal events etc.

4. Cases from the literature

In 1965, Churchill's friend and personal physician, Lord Moran (Charles McMoran Wilson) published shortly after Churchill's death, the book: "The struggle for survival 1940 - 1965", a biography of Churchill's life, based on the diaries that Moran held throughout the period from 1940 until Churchill's death in 1965 (Robitscher, 1968).

The book relied on Moran's diaries throughout this time and contained two types of arguments (Robitscher, 1968):

- the chronological events of what Churchill had done and expressed in his meetings with Roosevelt and Stalin; his remarks on the war, his opponents in Parliament etc. This, because Lord Moran, as Churchill's personal physician, had been present in all these confidences, not in the role of a doctor, but in that of a trusted friend.

- arguments on Churchill's state of health, which if they were made public during his lifetime, he would not hope to continue his duties for another two years as prime minister.

The publication of this book was accompanied by severe criticism in the British press of that time (Robitscher, 1968). According to them: Doctor Moran should have remained silent as far as he had seen.

In the well-known magazine Lancet, on the occasion of the publication of this book, it was emphasized that, "Public trust in the medical profession derives mainly from the conviction that what happens between the patient and the doctor should not be disseminated" and that, "If confidentiality is maintained for the living, he must be doubly respected for the dead". "By writing publicly about the state of health of an identifiable person, Lord Moran has set a precedent that should not be taken lightly."

While at the well-known British Medical Association (British Medical Association), in its annual meeting after this publication, its representative body, consisting of 560 members, took the decision, with only three votes against, in which

Lord Moran was not mentioned, where it was emphasized: "The death of a patient does not release the doctor from the obligation to maintain secrecy".

In spite of these contradictory attitudes about this book, many opinions and arguments in its favor were given in the discussions and the press of the time (Robitscher, 1968). According to them, "the testimonies of Lord Moran are very precious, because through them the missing aspects of Churchill's life have been revealed, in the first place, through the making public of the medical evidence".. "A figure like Churchill cannot have any privacy. He belongs to the whole world, living or dead, and all that pertains to him, especially health problems, have a universal interest" (Robitscher, 1968). "We live in a time when public figures, living or dead, become subjects of biographers, secretaries, assistants, or family members. When everyone is allowed to write about these cases, then why are doctors prohibited from doing so?" (Robitscher, 1968)

The same reasoning can be made in the case of Lord Moran, who published this book after the patient's death, mainly for Churchill's treatment, without discrediting the deceased (Robitscher, 1968).

In the medical literature, such examples are countless (Robitscher, 1968; Piédelièvre, 1966):

- the case of Marat, one of the leaders of the French revolution of 1789, who was killed while taking a bath, but whose doctor found that he was suffering from dermatitis (skin infection) of the scrotum and the perineum. The bath soothed him from the illness he was suffering from. This made it easier to assassinate him.

- the case of the doctor who compiled the medical reports on the progress of Napoleon's illness and behavior before he died.

- cases of illnesses and deaths of many US presidents etc.

5. Medical confidentiality in Albania

The issue of medical confidentiality in our country is presented in the Code of Medical Ethics and Deontology, which contains article 22 (keeping medical confidentiality) and article 23 (disclosure of medical confidentiality). So, according to these articles, the doctor's medical confidentiality constitutes a very important principle, but not of an absolute character, because it can be disclosed when the patient's life is at risk or the law requires it (Kodi i Etikës dhe Deontologjisë Mjekësore, 2012).

Thus, failure to maintain medical secrecy, as required by law, is also provided for in the Code of Criminal Procedure of our country. According to Article 282 (reporting by medical personnel), medical personnel for a treatment that they perform and suspect to be related to a criminal offense, are obliged to report it to the prosecutor's office (Kodi i procedurës Penale të Republikës së Shqipërisë, 1995).

A few months ago, pursuant to this article of the criminal procedure, two doctors and a nurse were arrested in Fier with the criminal charges of "not accusing the crime" and "actions that prevent the discovery of the truth" (Top Channel, 2022). This is because they had treated a person who was wanted by justice, after his crash with firearms in a village of Elbasan. So in this case, they had not implemented article 282 of the Code of Criminal Procedure, according to which they were obliged to report the treatment they had performed on this person to the judicial authorities.

6. Medical confidentiality after the death of public persons

The issue of medical secrecy after death is mentioned in the Code of Medical Ethics and Deontology (year 2012) of our country only in the second paragraph of Article 22 (maintenance of confidentiality): ".....Even after the death of the patient, with the exception in cases where it (medical secrecy) poses a risk to the health and life of others, the doctor must not reveal the professional secret".

As can be seen, this issue is dealt with very little in the Albanian medical legislation.

Therefore, for these cases, especially for public persons, which have begun to be analyzed in our country, the rules recommended by foreign literature should be applied, some of which were previously presented in this study.

For my part, I have participated in several cases of forensic deaths, the results of which I have announced and published in the press, thus not preserving medical confidentiality, but without violating the rules of the particularities of these cases, especially about criminal deaths and as such they will be considered as cases where post-mortem secrecy is not maintained. However, before the publication, I also received the permission of their family members (the deaths of Mehmet Shehu, Nako Spiru) (Çipi, 2015, 2018, 2020)).

-The case of the victims of the bomb in the Soviet embassy in Tirana in 1951, is also a criminal case, where there was no need to maintain medical confidentiality; also for this issue, I received the permission of the victims' family members, who also helped in their discovery and examination.

-In the case of the exhumation of Enver Hoxha in 1992, directed by me, its publication in the 2000s was done to refute the slander published at that time, according to which during the exhumation (taking out of the grave), the corpse was hit in the head and was damaged by the crane that was pulling it out. For this publication, I also had the approval of one of Enver Hoxha's family members. It was done to refute the slander published at the time, according to which during the exhumation (removal from the grave), the corpse was hit on the head and damaged by the jib of the crane that was removing it. For this publication, I also had the permission of one of Enver Hoxha's family members.

In relation to Enver Hoxha's medical follow-up data, the following publications can be mentioned:

- Notes on Enver Hoxha's medical follow-up, left by Prof. Dr. Fejzi Hoxha (published after his death by Prof. Dr. Lluka Heqimi), peer, from Gjirokastra and he, who had known Enver Hoxha since childhood and had cured him, despite the difficulties of this treatment, for a very long time (Heqimi, 2003). The publication of these notes, after the death of their author, constitutes one of those cases when medical confidentiality may not be preserved for very well-known public figures.

Indeed, in the last 10 years of his life, Enver Hoxha has been under the health care of a selected medical team, which included Prof. Dr. Isuf Kalo and Prof. Dr. Ahmet Kamberi.

- In recent years, two books with detailed datas have been published by these two doctors who treated Enver Hoxha:

"Block" by Prof. Dr. Isuf Kalo, year 2019 (Kalo, 2019).

"Our special patient" of Prof. Dr. Ahmet Kamberi, year 2020 (Kamberi, 2020).

Both books, regarding the preservation or not of medical secrecy after death, are justified, because they relate to the main leader of the 40-year-old communist dictatorship; therefore, his medical problems would be necessary to be known in the first place by the general public of our country. On the other hand, the permission of the widow of Enver Hoxha was obtained, for the publication of the book "Our special patient" by Prof. Dr. Ahmet Kamberi.

In these books, the patient's interests are generally preserved and respected.

So in the book "Block", Prof. Dr. Isuf Kalo writes among others: "I think that if Enver Hoxha had not lived at that time, he would not have become a dictator, but he would have become a very charming teacher, because he was very charming as a person;.....He became a cooperative patient that makes the doctor's job easier. He didn't want us to dictate him or the disease to dictate him, but he had the intelligence and the opportunity to cooperate with his treatment".

While in the book "Our Special Patient", Prof. Dr. Ahmet Kamberi, relying mainly on the doctor-patient relationship, emphasizes that: "in the relationship with the doctors, the patient was cordial. It never happened that he expressed his displeasure in words to any of us, even when he was not satisfied with our advice. He simply expressed his displeasure with a frown, with a lack of desire to prolong the discussion and with disobedience....".

But in the first book "Block" by Isuf Kalos, some information and thoughts on intimate life are given, which I think the Patient himself and his wife would not agree to be published after the Patient's death.

In the same way, in the book "Block" thoughts and arguments of a mainly psychological nature are given by the author of the book, about various events of

that time, thoughts which the Patient did not express and with which the Patient himself when he was alive, I believe that he would not agree.

These may have been some of the reasons that the approval of Enver Hoxha's family was not obtained for the publication of the book: "The Block".

Regarding these two publications, I have the following remarks and suggestions:

- The publication of these books by two well-known doctors: Prof. Dr. Isuf Kalo and Prof. Dr. Ahmet Kamberi, it would be good to be accompanied by the full publication of the autopsy report, as was done with the leaders of BS, Lenin and Stalin. This more to prove or disprove the hypothesis that he may have been eliminated.

- It would be more appropriate for such books to be published at a later time, as recommended by the relevant literature, according to which the memory of people who knew the deceased is much more important than what is left in subsequent generations, therefore the protection of medical confidentiality after death will diminish over time, until its complete disappearance. This is due to the fact that the publication of these two books, especially the book "The Block", was accompanied, in addition to numerous praises, even with a strict opposing reaction to the charming appearance of Enver Hoxha in the relationship with the doctors who treated him, while in the minds of people, both old and younger, the very negative testimonies of Enver Hoxha's life are still fresh, a part of those published by those who have known him since his youth, as well as those of monstrous crimes ordered by him, many of them still undiscovered etc.

7. Conclusions

- The important principle of medical confidentiality, which from a moral obligation has turned into a legal obligation and finally as one of the fundamental human rights, also contains the medical secret after death, which is not known enough.

- This concept of medical confidentiality after death contains various aspects that belong to mainly philosophical arguments, the interests of the dead person, the circumstances when this secret is not preserved, the time that has passed since death, the persons who have the obligation to preserve it or not, cases of preservation or not her for public persons etc.

- This type of medical secret, especially that of a public person for our country, constitutes a very delicate issue that requires great care in the cases of its announcement.

References

1. Berg J. (2001). Grave Secret: Legal and Ethical Analysis of Postmortem Confidentiality, Connecticut law review, Vol 34: 81, pp. 81-122.
2. Charlier Ph. (2014). Quand la science explore l'histoire, Editions Tallandier, Paris 2014, pp. 240-248.
3. Çipi B. (2005). Bioetika në një këndvështrim mjekoligjor, Shtëpia e botimeve Naim Frashëri, Tiranë, pp.48-60.
4. Çipi B. (2015). Ethical, juridical and historical issues of medical confidentiality, Journal JAHR, Rijeka, Vol 3, nr.5, pp.139-146.
5. Çipi B. Çipi S. (2015). Manual i Mjekësisë Ligjore, KLEAN Shpk, Tiranë, p.95.
6. Çipi B. (2018). Tranzicioni Shqiptar në lupën e Mjekësisë Ligjore, Shtëpia botuese Flamuri, Tiranë, pp. 34-50, 73-90, 269-274.
7. Çipi B. (2020). Përse vdekja e Mehmet Shehut, sipas mjekësisë ligjore kriminalistike, duhet të ketë qenë vrasje dhe jo vetëvrasje? Gazeta "Telegraf", Tiranë, 14.12.2020.
8. DeWitt C. (1959). Privileged communications between physician and Patient, Case Western Reserve Law Review.
<http://scholarlycommons.law.case.edu/caselrev>
9. Elezi I. (2002). E drejta Penale, Shtëpia botuese e librit universitar, Tiranë 2002, pp. 134-137.
10. Guidance and advice (2021). Confidentiality and disclosing information after death, pp. 1-9.
<http://themdu.com/guidance-and-advice/guides/disclosure-after-death>
11. Heqimi Ll. (2003). Profesor Fejzi Hoxha, mjeku, humanisti, pedagogu, shkencëtari; shtëpia botuese PEG, Tiranë.
12. Kalo I. (2019). Blloku, UET Press, Tiranë.
13. Kamberi A. (2020). Pacienti ynë i veçantë, Edlon, Tiranë.
14. Kodi i Etikës dhe Deontologjisë Mjekësore (2012). Urdhri i Mjekut të Shqipërisë, Këshilli Kombëtar, Botime "Vllamasi", Tiranë, 2012.
15. Kodi Penal i Republikës së Shqipërisë (1995), Kuvendi Popullor i Republikës së Shqipërisë.
16. Kodi i Procedurës Penale të Republikës së Shqipërisë (1995), Kuvendi Popullor i Republikës së Shqipërisë, Tiranë 21.03.1995.
17. Piédelièvre R. (1966). Souvenir d'un médecin légiste, Flammarion, Paris, pp. 5 -12.
18. Robitscher J.B. (1968). Doctors' privileged communication, public life and history's rights, Cleveland State University Law Journals, pp.199-212.
<https://engagedscholarship.csuio.edu/clevstlrev/vol17/iss2/3>
19. TopChannel (2022), Emrat/ mjekuan N.D., arrestohen dy mjekë dhe një infirmier në Fier, për çfarë akuzohen?, 31.3.2022.
<https://top-channel.tv/2022/03/31/emrat-mjekuan-nuredin-dumanin-arrestohen-dy-mjeke-dhe-nje-infirmier-ne-fier-per-cfare-akuzohen/>