

New Psycho-Active Substances: The Legal Procedure Used in European Union Countries and Turkey

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ÖZET:

Yeni psiko-aktif maddeler: Avrupa birliği ülkeleri ve Türkiye'de uygulan yasal süreç

Günümüzde narkotik maddelerin yerini yeni psiko-aktif maddeler almaya başlamıştır. Bu durumun temel sebebi psiko-aktif etki doğurmalarına rağmen henüz yasak maddeler listelerinde yer almamaları nedeniyle ceza yaptırım korkusu olmaksızın kullanımının ve ticaretinin yapılabilmesidir.

Son yıllarda bazı psiko-aktif maddelerin 'herbal drugs', 'baharat karışımı' gibi adlar altında, zararlı etkilerinin bulunmadığı söylenerek satışa sunulduğu görülmektedir. Bu maddelerin paketleri üzerinde 'hoş kokulu tütsü', 'insan tüketimi için değildir' gibi ibareler bulunmakta ve 'smart shop', 'head shop' adı verilen dükkanlar ve/veya internet siteleri aracılığı ile satış gerçekleştirilmektedir.

EMCDDA (European Monitoring Centre for Drugs and Drug Addiction-Avrupa Uyuşturucu ve Uyuşturucu Bağımlılığı İzleme Merkezi) Avrupa Birliği'ne bağlı ve temel faaliyet alanı uyuşturucu madde ve madde bağımlılığı ile mücadele eden profesyoneller arasında koordinasyon ve kooperasyonu sağlamak olan, onlara bilimsel verileri temin eden ve politika üreten bir organizasyondur. EMCDDA bünyesinde yer alan EWS (Early Warning System - Erken Uyarı Sistemi) ağı birlik ülkeleri arasında hızlı ve etkin iletişimi sağlayarak bu maddelerle mücadelede son derece etkili olmaktadır. Bu sistem aracılığı ile 1997 yılından beri toplam 114 yeni psiko-aktif madde bildirilmiş olup 2009 yılı 24 adet bildirim ile şimdiye kadarki en fazla bildirim yapıldığı yıl olmuştur. EMCDDA'nın birliğe üye 27 ülke ile Türkiye, Hırvatistan gibi aday ülkelerde Ulusal Temas Noktaları bulunmaktadır. Ülkemizin Ulusal Temas Noktası Türkiye Uyuşturucu ve Uyuşturucu Bağımlılığı İzleme Merkezi (TUBİM) dir.

EMCDDA bilimsel değerlendirme sonucunda yakalanan maddenin toplumsal risk taşıdığı kanaatine varır ise birlik ülkelerine maddenin belirlenen tarih içerisinde yasak maddeler listesine alınması konusunda bildirimde bulunmaktadır. Bu konuda üye ülkelere bildirim yapılan son iki madde BZP (Benzil Piperazin ve mCPP (Metaklorofenil Piperazin)'dir.

Evrensel bir prensip olan suçta ve cezada kanunilik ilkesi gereği hiç kimse henüz ulusal ve uluslar arası yasalarda yer almayan yeni bir psiko-aktif maddenin kullanımı, bulundurulması veya ticareti nedeniyle suçlanamamaktadır.

Bu maddelerin listelere dahil edilmesinde ise farklı süreçler yaşanmaktadır. Ülkeler yasak maddeleri üç farklı yöntemle tasnif etmektedirler. Ülkelerin büyük çoğunluğu bizzat maddenin adını yasa da saymakta ve ancak yakalanan madde kimyasal olarak listelerde yer alan maddeler ile tamamen aynı yapıda ise yasal müeyyide uygulanmaktadır. Genetik tasnif sisteminde ise madde ülkelerin yasalarında ana yapısı ile yer almakta ve ana yapıya çeşitli kimyasal grupların eklenmesi ve çıkarılması ile oluşan yeni yapı yasa kapsamında değerlendirilmektedir. Analog sistem ise yeni ortaya çıkan maddenin halen ekli listelerde yer alan maddelerden birine oldukça benzer bir kimyasal yapıda olmasını ve uyarıcı, depresyon yapıcı veya halüsinojenik etki oluşturmaması yeterli bulmaktadır.

Yeni bir maddenin yasak maddeler listesine alınmasında yaygın olarak kullanılan standart prosedür söz konusu maddenin bildirimini takiben Sağlık Bakanlığı tarafından bilimsel değerlendirme yapılmasını ve müteakiben sıklıkla Bakanlar Kurulu'na bazı ülkelerde ise parlamento ve/veya senatoya götürülerek onaylanması şeklinde işlemektedir. Standart sürecin uzun zaman alabilmesi bazı ülkelerin kolaylaştırıcı önlemler almasına yol açmıştır. Bu önlemler hızlı ve acil süreç olmak üzere iki çeşittir. Bu son iki süreç arasındaki temel fark hızlı sürecin devamlı, acil sürecin geçici olmasıdır. Bu nedenle acil süreçte birlikte aynı zamanda standart süreçte işleme başlar.

Yeni psiko-aktif maddelerin yasa kapsamına alınması sürecindeki gecikme bu yasal boşluktan sadece uyuşturucu tacirlerinin yararlanması sonucunu doğurmaktadır. Maddenin yasa kapsamına alınması ise söz konusu maddenin pazardaki varlığında ciddi bir azalmaya yol açmaktadır.

Anahtar sözcükler: Yeni psiko-aktif maddeler, yasadışı maddeler, uluslararası kontrole tabi maddeler, kontrole tabii maddenin listelenme süreci, bitkisel karışım, uyuşturucu etkili yasal maddeler

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ABSTRACT:

New psycho-active substances: the legal procedure used in european union countries and Turkey

New psycho-active substances have recently begun to be substituted for narcotics as drugs of abuse. The main reason for this situation is that they are not included in the controlled substance list, despite the fact that they cause psychoactive effects, resulting in their purchase and use without fear of penalty.

It has been observed, in recent years, that some psychoactive substances have been traded under the street names of 'herbal drugs', or 'spices' implying that they are harmless and leading to misinformation about their true content. There are some expressions such as 'incense' or 'nonhuman consumption' on their packets and they are sold by 'smart shops', 'head shops' and/or web sites.

The EMCDDA (European Monitoring Centre for Drugs and Drug Addiction) is a European Union (EU) decentralised organisation which has been established to provide science-based information, policy making, coordination, and cooperation among the professionals working in the field of illicit drug use and trafficking. The EWS (Early Warning System) as a subunit of the EMCDDA is an effective means of fast and effective communication among the EU countries. A total of 114 new psychoactive substances have been reported through the system since 1997, and the 24 of them were identified in 2009.

The EMCDDA has National Focal Points (NFPs) set up in the 27 EU Member States, and in candidate countries such as Turkey and Croatia. The National Focal Point of Turkey is the Turkish Monitoring Centre for Drugs and Drug Addiction (TUBİM).

If the EMCDDA decides to bring under its control a new psychoactive substance that has social risks identified by scientific evaluation, the decision is declared and must become effective in all member states by a specific deadline. BZP (Benzylpiperazine) and mCPP (meta-chlorophenylpiperazine) were the last two substances to have been placed on the control list by the EMCDDA.

Due to 'universal principle of legality' no one shall be held guilty of possession, use or trafficking of a new psychoactive substance that has not yet been listed as a controlled substance under national or international law. Different procedures are used for adding substances to the controlled lists. There are three kind of classifications used by countries. Generally, countries list the chemical names of controlled substances individually in the national legislation. Legal sanctions are applied only if the substance that has been seized is chemically equivalent to a substance on the list. The generic system refers to the inclusion, usually within the list, of the individual substances under control, and of a precise definition of a group of substances. In the context of the current study, this is over and above the isomers, esters, ethers and salts. The analogue system addresses more general aspects of similarity in the chemical structure of a controlled substance; this aspect might be supplemented by a requirement for similarity in pharmacological activity such as stimulant, depressant, or hallucinogenic effects.

Standard procedure is the common way to add a new psychoactive substance to the controlled substances list. This procedure begins with the notification of the Ministry of Health about the new psychoactive substance and continues by scientific evaluation. If the evaluation results in a recommendation for the substance to be banned, a proposal for approval is usually presented to the Council of Ministers or alternatively to the Parliament and/or the Senate.

Due to the fact that standard procedure can take a long time, some countries may use rapid or emergency procedures. The basic difference between them is that the rapid procedure is permanent, whereas the emergency procedure is temporary until the standard procedure is completed.

If the implementation of the legal procedure for banning a new psychoactive substances is delayed, only drug traffickers benefit. A decrease in the illicit market is expected as a result of listing of a new psychoactive substance in the controlled substance list.

Key words: New psychoactive substances, illegal drugs, internationally controlled substances, legal procedure for controlled drugs, herbal mixtures, legal highs

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INTRODUCTION

Substance diversity circulating at drug market has increased in the last couple of years. New psycho-active substances have recently begun to substitute the narcotics which have been widely used before. The main reason of this change is trading and using them without penalty fear despite they result in psycho-active effects, as they have not been added into the controlled substance list yet (1). The drug users are also encouraged by absence of penalty. Especially the experienced users who have been investigated by judicial authorities before prefer new psycho-active substances so they do not have any problems with law enforcement agencies (2).

Another marketing strategy is that some psycho-active substances have been traded under the street name of 'herbal drugs,' and 'spice' leading to misinformation that they are harmless at recent years (3,4). This strategy is mostly used for synthetic cannabinoids which contain JWH-018, JWH-073, CP47,497 (C6/ C7/C8/C9 homolog), and HU- 210. They have been marketed under the street



Picture 1: Marketing substances under different names and ingredients

name 'spice mix' and look like hemp or tea (5-8). These mixtures which are sold in packets are mostly marketed as 'legal cannabis' by means of 'smart shops,' 'head shops' and/or web sites (Picture 1) (9,10). The hype of some press and televisions resulted in rapidly increasing demand to these substances (2,7). For instance, the first smart shop which was opened in the middle of 2008 in Łódź, Poland was followed by many others and the count of the shops reached forty in the same year in Poland (11). Similarly increased demand occurred in other EU (European Union) countries and spice mix were banned by Germany, Austria, Poland, and France in 2009 (2,6,11,12).

Some other expressions such as 'incense,' 'nonhuman consumption' were written on the packets (2,4). One of the web sites selling these substances have phrases like 'Legal responsibility with your own risk. Apply to your lawyer.' A website is marketing their products under the name of "Bonzai" by giving the impression of 'natural botanical aromatic mixtures and food fertiliser' with the trade mark 'HB' in Turkey (Picture 2) (13). Everybody with a credit card can easily order from this web site by means of paypal. Orders from this web site is easily eluded by custom officers because of their packaging look like fertilizer bags and low value custom declaration. Turkish users express that these substances can even be used in community, as they are odorless. There isn't any analysis made by legal authorities in spite of information at the web site about ingredients of the substances (14).

Strategies to fight against new psycho-active substances

As small changes of previously known chemical structures yield to many new psycho-active substances and they are not included in the controlled substance list,



Picture 2: The products from a web site which is served in Turkish.

to fight against these substances new strategies had to be developed. EMCDDA (European Monitoring Centre for Drugs and Drug Addiction) is a EU decentralised organisation which mainly exists to provide science based information, policy making, coordination, and cooperation among the professionals working in the field of illicit drug use and trafficking. It was inaugurated in Lisbon (15). EWS (Early Warning System) as a subunit of EMCDDA has been quite effective struggling tool by means of fast and effective communication among the EU countries. Besides the 27 EU Member States, candidate countries such as Turkey and Croatia and also Norway participate in EMCDDA activities.

EMCDDA has National Focal Points (NFPs) set up in the above mentioned countries. The National Focal Point of Turkey is the Turkish Monitoring Centre for Drugs and Drug Addiction (TUBIM). It is established in 2002 by order of Prime Ministry under The Smuggling and Organised Crime Division of Directorate General of Turkish National Police under the Ministry of Home affairs (16).

EMCDDA has five different strategies. These can be classified as follows: Coordination among the units related with drugs, decreasing supply, decreasing demand, diminish drug related activities, and international cooperation and information exchange/research/evaluation. EWS is established by Council Decision 2005/387/JHA of 10 May 2005 on the information exchange, risk-assessment and control of new psycho-active substances in order to decrease supply. A total of 114 new psycho-active substances have been reported since 1997 through the system, and the 24 of them were notified in 2009 (17).

If EMCDDA makes a decision to bring a new psycho-active substance under control that has social risks (after scientific evaluation following the notifications from NFPs), the decision should become effective within the deadline in all member states. Required regulations should be devised by member states towards the declaration from EMCDDA within one year. This deadline is 180 days for the declarations announced by UN (United Nations) (18,19).

BZP (Benzylpiperazine) and mCPP (meta-Chlorophenylpiperazine), which suddenly appeared as big problems in Turkey in the last couple of years, are the latest two substances which are declared by EMCDDA to

the member states (20). EMCDDA don't declare any requirements to member states if it decides that the new psycho-active substance does not need to be banned, but this doesn't hinder the independent decision of any member state according to their own circumstances and dimensions of abuse.

Drug misuse offences at Criminal Law

Due to 'universal principle of legality' no one shall be held guilty of possession, use or trafficking, if a new psycho-active substance has not yet listed as a controlled substance under national or international law. This principle is also known 'nullum crimen sine lege' or 'nulla poena sine lege principle' in Latin (21).

If an unlisted psycho-active substance, in 1961 the Single Convention on Narcotic Drugs and 1971 The Convention on Psychotropic Substances, is seized, there would be a legal gap until it is banned. It is well-known by drug traffickers that the legislation procedure has different stages and could take a long time, consecutively many new psycho-active substances appeared at the drug market (17).

Due to the fact that all countries, which are also parties of UN conventions including EU member states have already made appropriate legal implementations and there isn't any significant problems about the substances which are already listed as controlled substances. Whereas different procedures are used in adding a new substances to the control lists. There are three kind of classifications which are used by countries (22).

Most of the countries adopted 'individual listing' system in which the chemical definitions of controlled substances is named individually in the national legislation and law sanction is only applied if the seized substance is chemically equivalent to any of the listed. List is extended to a substance's isomers, esters, ethers, and salts. This designated content known as principle of numerous clauses in law (21) doesn't allow taking a new psycho-active substance which comes from the same chemical family with already listed ones and that evokes similar psycho-active effects to the list. These substances can be added to the controlled substances list by evaluating as totally new substances (22).

The another system is called generic system and refers to the inclusion, usually within the list of individual

substances under control, of a precise definition of a group of substances; this is over and above the isomers, esters, ethers, and salts and include all of them at the controlled substance list (22). The generic system is applied in Ireland and UK (23).

The third system is named analogue system which addresses more general aspects of similarity in chemical structure of a controlled substance; this aspect might be supplemented by a requirement for similarity in pharmacological activity such as stimulant, depressant, or hallucinogenic effect on the central nervous system that is equal or greater than the effect of a controlled substance in schedule I or II of UN Conventions (22,23).

The procedure to add a new psycho-active substances to the controlled substance lists.

Standard procedure is the common way in most of the member states to take a new psycho-active substance to the controlled substances list and it has a similar outline of stages. However, there are partial differences among the countries during the implementation procedures. These procedures begin with the notification of the Ministry of Health about the new psycho-active substance and continue by scientific and social evaluation, which should be carried out by a scientific or expert body. This assessment should include chemical structure and precursors of new substance, psycho-active effects, health and social risks including mortality and morbidity rates, potential involvement of organized crime, use, manufacturing, and trafficking of new substance. If it merits to be banned, a proposal is presented for the approval to the Council of Ministers mostly or sometimes to the Parliament and/or the Senate. In the final stage of the procedure, the proposal is forwarded for signature of the President or King. Afterwards, the new Decree is published in the Official Journal (22,23).

This procedure has been described at the 19 th. paragraph of the law numbered 2313 titled "The control of the narcotic and psycho-active drugs" in Turkey. The text of the paragraph is: "Except the listing individually at the first item of the 19 th paragraph, the other toxic and psycho-active substances which are accepted by scientific assessment. The harmful effects are also scope of the law and come into force with the proposal given by Ministry

of health and approval of the Council of Ministers (24).

The procedure is started directly by the Ministry of Health or with the notification of Ministry of Health by any organisation which works at the drug related field in the country after seizure of the new psycho-active substance. The process is pursued by the Department of Narcotics and Psychotropic Substances under the Medicine and Pharmacy Directorate General of Ministry of Health. The Ministry of Health evaluates the notifications in consultation with scientific boards, Turkish Early Warning System Working Group, which is one of the major groups of TUBIM (Turkish Monitoring Center for Drug Dependence and Use), and universities. Final decision is given by Ministry of Health after this evaluation.

The last listing procedures which began with the notification dated 16 April 2007 about two new psycho-active substances named BZP (1-benzyl piperazine) and m-CPP (meta-chlorophenylpiperazin) by the 5 th Committee of the Council of Forensic Medicine have been finalized with the approval of the Council of Ministers dated 08 July 2008 and 17 September 2009 respectively (25,26). The listing procedure was completed by approval of the The Council of Ministries after approximately 1,5 and 2,5 years in the last two decisions. Even no parliament approval is required in our country, the length time needed for the mentioned cases shows that precautions are needed to fasten the process.

Due to the fact that standart procedure can take a long time, some countries take precautions, including the rapid and the emergency procedures. The basic difference between them is that the rapid procedure is permanent not expiring after a certain period of time, whereas the emergency procedure is temporary with which the standart procedure begins. If the control is not confirmed during this period by the standard procedure, it will expire. This procedure thus provides for a quick but temporary control measure (22).

One of the countries in which emergency procedure could be used is Germany. In urgent cases in this country, if it is thought that the new notified pscho-active substance abuse could be caused an important social risk, the Federal Ministry of Health decides on a Regulation which needs not be submitted to either the Council of Ministers or the Bundesrat. Following the Minister's decision, the Regulation is published in the Federal Law Gazette. This

Regulation, however, expires within 1 year. Within this period, the standard procedure must be followed in order to control the substance. There is also an emergency procedure in the laws of Netherlands similar to the that of Germany, which allows for new substances to be controlled immediately (within 1 week), and its effects will expire within 1 year if not confirmed by Standard procedure permanently (20).

Countries such as Luxembourg, Poland, Slovakia, Sweden, Norway in which the rapid procedure is in force, in cases of urgency like numerous fatalities and illnesses, the above procedure may be accelerated by the government. In such circumstances, rapid listing procedure can be done in a few days by expediting the process instead of diminishing the stages of procedure (22).

The system used for new psycho-active substances in European Union countries

The procedures at nine countries require the approval of one Minister (mostly Ministry of Health) [Denmark, Germany (only for emergency procedure), Estonia, Spain, France, Lithuania, the Netherlands (only for emergency procedure), Croatia, Norway], procedures at two countries (Greece, Austria) require the approval of two Ministers (Ministry of Health and Ministry of Justice), procedures at five countries (Belgium, Cyprus, Romania, Slovenia, Sweden) require the approval of the Council of Ministers (which may also include signature by the President), procedures at ten countries [The Czech Republic, Germany (standard procedure), Ireland, Latvia, Luxembourg (both standard and rapid procedures), the Netherlands (only for standard procedure), Poland (both standard and rapid procedures), Portugal, Slovakia (both standard and rapid procedures), the United Kingdom] require the approval of the parliament (which may include also signature by the President) (22).

Newly controlled substances are added to a list annexed to the main drug control law in 14 countries [Czech Republic, Germany, Greece, Spain (for psychotropic substances in Spain), Cyprus, Lithuania, the Netherlands, Poland, Portugal, Romania, Slovakia, United Kingdom, Croatia, Norway], while in 11 [Belgium, Denmark, Estonia, Ireland, Spain (for narcotic substances in Spain) France, Latvia, Luxembourg, Austria, Slovenia, Sweden] they are added to lists established in separate

Decrees or Orders (22).

Due to the reliance on the European-level risk assessment, six countries (Belgium, Greece, Spain, Hungary, Portugal, Finland) do not employ it at the national level, while fourteen countries (The Czech Republic, Ireland, Cyprus, Luxembourg, Poland, Slovenia, Croatia, Latvia, Lithuania, Austria, Romania, Slovakia, Sweden, Norway) might or could provide for it nationally on an ad-hoc basis. Six countries including Denmark, Germany, Estonia, France, the Netherlands, and the United Kingdom are directly referred to the main Drug Law or its equivalent (22).

Six countries (The Czech Republic, Denmark, Estonia, Ireland, France, Poland) do or might provide for the possibility of consultations with independent scientists, in three countries (the Netherlands, Austria, and the United Kingdom) risk assessment is performed by scientifically-independent bodies while in other countries, this will be a group of experts either part of a competent ministry or part of a related State or Governmental Agency (22).

CONCLUSION

Globalization made information exchange and cooperation necessary among countries in fighting against abused drugs in which the international linkage is strong. EWS, as an effective subunit of EMCDDA, plays an important role by sharing information, tracing notification simultaneously, and providing rapid communication, common scientific attitude, and prevention.

However tracing the notification simultaneously is not enough to fight effectively against drug abuse. There are two main obstacles for effective prevention of substance supply to the market. First one is the capacity of the forensic laboratories and the second is the applied procedures to list substances. Another difficulty is experienced in providing of reference material for GS-MS analysis.

LGC standards company (Middlesex-UK) recently launched reference materials to the market just after the notification of the new psycho-active substances. The last launched reference materials by this firm are synthetic cannabinoids such as JWH-018, CP-47497 and HU-210 which are found in spice mix (27,28). Tender and acquisition procedures should be simplified to struggle with the drug problem effectively at a time even the

private companies produce a reference material as fast as the new psycho-active substances appear.

If implementation of the legal procedures to ban new psycho-active substances takes long time, only drug traffickers benefit. Decrease in supply or being pulled out of the market are expected once a new psycho-active

substance is listed in the control list. It is observed for mCPP at recent years. Therefore, the process used by The Ministry of Health in Turkey should be accelerated accordingly after the notification of new psycho-active substances or an emergency processing system should be established, as it was done in Germany and Holland.

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