
CRIMINAL LEGAL PROTECTION OF PEOPLE'S HEALTH

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Abstract: The health, after the life, is the second most important biological value of man as an individual. It is directly related to life. The dialectical opposite of health is disease. Health facilitates and sustains a person's life, while illness complicates and destroys it.

Health is not only a personal value of a person, but a social value. Social activities, be they manual or mental, can only be performed effectively by healthy people. Therefore, the protection of people's health is subject to the constitutional and legal normative regulation of the states.

The Constitution of the Republic of North Macedonia, in Article 39, guarantees, every citizen of the Republic, the right to health care. The Constitution gives every citizen the right, and obliges him, to protect and improve his own health and the health of others.

The health care of the citizens of the Republic of North Macedonia is subject to the regulation of more than twenty laws in the field of health. Of these, the Law on Health Care, the Law on Public Health, the Law on the Protection of Patients' Rights and the Law on Medicines and Medical Devices are undoubtedly the most significant. Violation of the provisions of these and other laws is sanctioned by the misdemeanor's protection provisions contained therein.

The criminal legal protection of human values, be they personal or social, is ensured by the criminal legislation of the state. Immediate criminal legal protection is regulated by the criminal laws of the states. In the Republic of North Macedonia it is regulated by the Criminal Code. This code also regulates the criminal legal protection of people's health, as a personal and social value. The Code prescribes several criminal offenses against people's health. They are contained in its twenty-first chapter entitled "**Criminal offenses against human health.**"

The perpetrators of these offenses are persons who directly perform health care work (doctors and other health workers), persons who indirectly participate in the performance of these works (pharmacists or other persons authorized to prepare or dispense medicines and veterinarians or other authorized veterinary workers) and other persons.

Keywords: health, illness, criminal offense, perpetrator, punishment.

1. INTRODUCTION

Health is the absence of disease and physical injuries and, in connection with that, the complete physical, mental and social well-being of a person (This definition is derived from the Constitution of the World Health Organization - WHO Constitution – Preamble, accessed at <https://apps.who.int/gb/bd/PDF/bd47/EN/constitution-en.pdf?ua=1>.) After life, it is the second biological value of man. The greatest crime is the crime against life. A crime against health is a crime of causing illness or bodily or mental injury that impairs a person's physical, mental and social well-being.

By disrupting the physical, mental and social well-being of a person due to illness, the quality of a person's life is impaired. There is no quality life with illness or injury. The more severe disease or injury means the worse quality of life. The ultimate outcome is death as the dialectical opposite of life. That is why criminal offenses such as crimes against health as a human value are ranked high in the criminal legal protection of human individual and social values. In the Criminal Code, they should be found immediately after criminal offenses against life and body (In the Criminal Code, they are in the seventh place (in the twenty-first chapter) after crimes against life and body, which are in the 14th place, that is, in the first place in the special part of the Code- Article 205-207 of the Criminal code of the Republic of North Macedonia..) The authors of the Code and the legislator were obviously guided by the ranking of personal and social values in the Constitution of the Republic of North Macedonia. We believe that in the Constitution the provisions on the right to health care should be found immediately after the provisions on the inviolability of life, contained in Article 10.

When it comes to the Constitution, in Article 39, it guarantees every citizen of the Republic the right to health care. Then he gives every citizen the right, and obliges him, to protect and improve his own health and the health of others. This constitutional provision is apparently incorporated in the Criminal Code. The criminal offenses in it, according to their perpetrators, can be grouped into three groups: criminal offenses of persons who directly perform health care tasks (doctors and other health workers), criminal offenses of persons who indirectly participate in the

performance of these tasks (pharmacists or other persons authorized to prepare or dispense medicines and veterinarians or other authorized veterinary workers). Given the fact that these criminal offenses are committed by members of a certain profession, we can also call them professional crimes. In addition to them, in the group of criminal offenses against human health, there are also offenses committed by other persons, including those listed above, if they also commit such offenses.

The legal rules for the actions of citizens in the field of health care are contained in more than twenty laws adopted for the regulation of social relations in this area. Among them, without a doubt, the most significant are: the Law on Health Care, the Law on Public Health, the Law on the Protection of Patients' Rights, the Law on Medicines and Medical Devices and the Law on the Protection of the Population from Infectious Diseases. Criminal offenses against human health actually represent violations of the provisions of these laws and, of course, of other laws in the field of health. Those violations occur with acts or omissions that have caused, or could have caused, serious consequences for people's health. From the point of view of the psychological relationship - the will of the perpetrators towards the violations, they can be violations with intention (A criminal offense is committed with intention when the perpetrator was aware of his offense and wanted its execution or when he was aware that a harmful consequence could occur due to his action or omission, but agreed to its occurrence - Article 13. of the Criminal code of the Republic of North Macedonia.) or from negligent violations of laws or other health care regulations. (A criminal offense is committed due to negligence when the perpetrator was aware that due to his action or omission a harmful consequence could occur, but he thought lightly that he would be able to prevent it or that it would not occur, or when he was not aware of the possibility of a harmful consequence occurring, although according to the circumstances and according to his personal characteristics he was obliged and could have been aware of that possibility- Article 14. of the Criminal code of the Republic of North Macedonia.)

2. CRIMINAL OFFENSES OF PERSONS WHO DIRECTLY PERFORM HEALTH CARE WORK

Doctors and other health professionals have been trusted by society to take care of people's health, which is the highest biological value of a living person. This requires from them an above-average conscientiousness and responsibility in the performance of their work duties in the provision of medical assistance.

The negligent and irresponsible performance of their work duties is sanctioned by the criminal offense of Article 207 of the Criminal Code entitled "**Negligent treatment of patients** (Boshkoski K.1991). This offense can be committed intentionally or through negligence. When we are talking about intent, it may be possible intent - when the healthcare worker was aware that due to his action or inaction, a harmful consequence could occur, but he agreed to its occurrence. There are no known cases of committing this offense with direct intent (deliberately). But regardless of what kind of intention it is, according to our knowledge, this offense is most often committed due to unconscious negligence - when the perpetrator was not aware of the possibility of a harmful consequence, although according to the circumstances and according to his personal characteristics, he was obliged and could to be aware of that possibility. In a smaller number of cases, the criminal offense is committed with conscious negligence - when the perpetrator was aware that a harmful consequence could occur due to his action or omission, but thoughtlessly believed that he would be able to prevent it or that it would not occur.

According to the legal description, this criminal offense can be committed by a doctor who, when providing medical assistance, uses an obviously unsuitable means or method of treatment, or does not apply appropriate hygiene measures, or acts negligently in general and thereby causes a deterioration in the health condition of a person or a midwife or another healthcare worker who acts negligently when providing medical assistance or care and thereby causes a deterioration in the health condition of a person. For these cases of committing the criminal offense, the Code prescribed a monetary penalty or imprisonment for up to three years. In case the offense is committed due to negligence, a monetary penalty or imprisonment of up to one year is prescribed Wilson W. 2017)

Doctors and other health professionals can also be appeared as perpetrators of the criminal offense **Refusal to provide medical aid** (Boshkoski K.1991), from Article 208 of the Criminal Code. This offense is committed by omission. According to the Code, a doctor or other healthcare worker who, contrary to his duty, does not provide immediate medical assistance to a person whose life is in danger, can be held responsible for this offense. For this failure, the Code prescribes a monetary penalty or imprisonment for up to one year. But if the death of the person occurs due to the omission, the perpetrator will be punished with imprisonment from six months to five years.

3. CRIMINAL OFFENSES OF PERSONS WHO INDIRECTLY PARTICIPATE IN THE PERFORMANCE OF HEALTH CARE WORK

According to the "word" of the Criminal Code, persons who indirectly participate in the performance of health care work are: pharmacists or other persons who perform pharmacy work and veterinarians or other authorized veterinary workers.

For pharmacists or other persons who carry out pharmacy work, the Criminal Code, with Article 211, prescribed the criminal offense **Negligent performance of pharmacy activity**.

According to the Code, this offense can be committed by a pharmacist or another person authorized to prepare or dispense medicines who will prepare a medicine contrary to the rules of their profession or who will dispense the wrong medicine, and because of this the life or health of a person will be put in danger. The penalty for this offense is a monetary penalty and imprisonment for up to one year.

If this offense is committed due to negligence, the penalty is lighter and is reduced to a monetary penalty or imprisonment for up to six months.

Veterinarians or other authorized veterinary workers appear as executors of the criminal offense **Negligently performing examination of meat for consumption** from Article 214 of the Criminal Code.

The first paragraph of this article gives the legal description of this offense when it is committed with intent. It reads: "A veterinarian or other authorized veterinary worker who negligently inspects livestock for slaughter or meat intended for consumption or fails to perform an inspection contrary to the regulations and thus enables the sale of meat harmful to human health, will be punished with imprisonment from six months to three years."

In the second paragraph, the execution of the offense from paragraph 1 by negligence is sanctioned. In this case, the perpetrator is punished with a monetary penalty or imprisonment for up to six months.

The execution of the listed offenses by a legal entity is sanctioned by a monetary penalty.

4. CRIMINAL OFFENSES AGAINST HUMAN HEALTH COMMITTED BY OTHER PERSONS

This group of crimes includes the following crimes: Transmitting an infectious disease, Failure to comply with health regulations during an epidemic, Quackery, Unauthorized transplantation of parts of the human body, Production and marketing of harmful medicinal products, Production and marketing of harmful food and other products, Unauthorized production and placing on the market of narcotic drugs, psychotropic substances and precursors and criminal offense Enabling the use of narcotic drugs

The criminal offense Transmitting an infectious disease from Article 205 of the Criminal Code will be committed by a person who, in violation of regulations or orders by which a competent authority determines examinations, disinfection, isolation of the sick or some other measures for the suppression or prevention of infectious diseases in humans or by employment or keeping a person suffering from an infectious disease by performing a sexual act or otherwise causes the transmission of an infectious disease, as well as a person who does not act according to the specified regulations or orders with regard to the suppression or prevention of infectious diseases in animals that can be transmitted to humans and thereby cause the transmission of an infectious disease. For this type of action or failure to act, the Code prescribed a monetary penalty or imprisonment for up to three years.

If an incurable infectious disease is transmitted as a result of the described action, the perpetrator will be punished with imprisonment from one to ten years. In such a case, the attempt to transmit an incurable infectious disease is punished with the same penalty.

The law also sanctioned endangering people's safety by falsely threatening transmission or spreading false claims about the existence of an incurable infectious disease with a monetary penalty or imprisonment of up to six months.

If the transmission of an infectious disease is caused by negligence, the perpetrator is punished with a monetary penalty or imprisonment of up to six months.

The criminal offense Failure to act according to health regulations during an epidemic from Article 206 of the Code is committed by a person who, during an epidemic of a dangerous infectious disease, did not act according to the regulations or orders that determine measures for its suppression or prevention. The punishment for this failure of the person is a monetary penalty or imprisonment for up to one year

The criminal offense Quackery is closely related to alternative medicine, which is gaining momentum due to the high prices of medical services, the long wait and duration of diagnostic procedures in state health institutions, and the frequent lack of the necessary drugs and other medical means needed to treat the sick. Unlike medical treatment in alternative medicine, which is performed by trained persons, in quackery, medical treatment is performed by persons without professional training for such treatment. According to Article 209 of the Criminal Code this offense is committed by a person who, without prescribed professional training, engages in treatment or providing medical assistance. For such "treatment" the perpetrator will "earn" a monetary penalty or a prison sentence of up to one year (Boshkoski K. 1991).

Since 1967, when South African doctor Christian Bernard performed the first straight heart transplant, transplanting multiple human organs has become almost routine. Transplantation of human organs saves lives. Life is the greatest value of man. Many people would give wealth to preserve life. This is precisely why criminal organ transplantation is a profitable criminal activity and precisely why it is gaining momentum in the modern world.

The criminal offense Transplantation of parts of the human body is sanctioned with Article 210 of the Criminal Code. This offense will be committed by anyone who takes a part of another's body for the purpose of transplantation or transplants a part of the body to another, even though the taking or transplantation is contrary to the medical profession or science, as and anyone who, with the intention of transplanting, takes a part of the human body before death has been determined, according to the prescribed manner. Whoever acts in one of these ways will be punished with imprisonment from three months to five years.

If someone takes a part of the body of another or transplants a part of the body to another without the consent of the donor or recipient or their legal representative, if the donor or recipient was unable to give consent, he will be punished by a monetary penalty or imprisonment up to three years. The same penalty will be imposed on anyone who, contrary to the reward law, sells or mediates the giving of body parts to living or dead persons for transplantation.

The criminal offense of Manufacturing and placing on the market harmful means of healing (Article 212) is committed by a person who manufactures, sells or otherwise places on the market drugs or other means of treatment that are harmful to health. For this kind of behavior, the person will be punished with a monetary penalty or with imprisonment of up to three years. If such an action is committed due to negligence, the person will be punished with a monetary penalty or imprisonment for up to one year.

The criminal offense Manufacturing and placing on the market harmful food and other products from Article 213 of the Criminal Code will be committed by any citizen who produces for the purpose of sale, sells or otherwise puts on the market harmful food products or beverages or means for personal hygiene, care or other harmful products that will cause danger to the life or health of people. For such behavior, the citizen can be punished with imprisonment from three months to three years. If the act is done due to negligence, he will be punished with a monetary penalty or imprisonment of up to six months.

The production of narcotic drugs and their trade, according to academician Kambovski, is one of the most widespread forms of crime in the modern world. The alienated man in modern society, about whom Sartre writes, is inclined to run away from, for him, the unpleasant reality. One of the ways of escaping from it is the consumption of narcotic drugs. Narcotic drugs are expensive products, and they provide criminals with a good income. This is exactly the reason for the spread of this crime. The Criminal Code of the Republic of North Macedonia sanctions this crime with two crimes which are described below (Kambovski V. 2005),

The criminal offense Unauthorized production and distribution of narcotic drugs, psychotropic substances and precursors from Article 215 of the Code is a very frequent offense in contemporary social pathology. This offense is committed by anyone who unauthorized manufactures, processes, sells or offers for sale or for the purpose of sale buys, holds or transfers or mediates the sale or purchase or in any other way unauthorized puts into circulation narcotic drugs, psychotropic substances and precursors. For such actions, the perpetrator will be punished with imprisonment from three to ten years. If this criminal offense was committed by several persons or the perpetrator of this offense organized a network of resellers or intermediaries, the perpetrator will be punished with imprisonment for at least five years. If in this case one of the perpetrators, except the organizer, discovers the offense or contributes to its discovery, he will be exempted from punishment. If it is a perpetrator of the criminal offense with narcotic drugs, psychotropic substances and precursors of a smaller quantity, he will be punished with imprisonment from six months to three years.

The Code has prescribed a penalty for anyone who unauthorized makes, procures, brokers or makes available equipment, material or substances that he knows are intended for the production of narcotic drugs, psychotropic substances and precursors. The punishment is imprisonment from one to five years.

Finally, the criminal offense Facilitating the use of narcotic drugs from Article 216 of the Criminal Code, which induces another to enjoy narcotic drugs and precursors, or provides narcotic drugs and psychotropic substances to be enjoyed by him or another person, or makes available premises for the enjoyment of narcotic drugs, psychotropic substances or otherwise enables another to enjoy narcotic drugs, psychotropic substances. For such an act, the perpetrator is punished with imprisonment from one to five years. If this was committed against a minor or against several persons or caused particularly severe consequences, the perpetrator will be punished with imprisonment from one to ten years.

5. INSTEAD OF A CONCLUSION

Like many other criminal offenses prescribed by the Criminal Code, some offenses against people's health, whether committed intentionally or through negligence, have their own serious forms. The qualification of these forms as severe is done according to the severity of the consequences. The consequences are serious injury or severe health impairment or the death of one or more persons. Serious forms of crime are sanctioned in Article 217 of the Code under the title "**Serious offenses against human health.**"

Serious forms, if they are committed intentionally or through negligence, are the offenses Transmitting an infectious disease (Article 205), Negligent treatment of the sick (Article 207), Quackery (Article 209) Negligent practice of pharmacy (Article 211) Manufacturing and placing on the market harmful means for healing (Article 212), Production and placing on the market of harmful food and other products (213, paragraph 1) Negligent performance of inspection of meat for consumption (Article 214), Unauthorized production and placing on the market of narcotic drugs, psychotropic substances and precursors (Article 215) and Enabling the use of narcotic drugs (Article 216)

The Criminal Code prescribes a prison sentence of one to ten years for any serious criminal offense against human health committed with intent, if due to the offense a person is seriously injured or his health is severely impaired.

If the criminal offense resulted in the death of one or more persons, the Code prescribes a prison sentence of at least four years.

If the criminal offense was committed due to negligence, and a person will be seriously injured or his health seriously impaired, according to the Code, the perpetrator will be punished with imprisonment from three months to three years; if the death of one or more persons occurred, the perpetrator will be punished with imprisonment from six months to five years.

Criminal offenses: Transmitting an infectious disease (Article 205 of the Criminal Code), Failure to comply with health regulations during an epidemic (Article 206), Negligent practice of pharmacy (Article 211), Production and placing on the market of harmful means of treatment (Article 212), Production and placing on the market harmful food and other products (Article 213), Negligent inspection of meat for consumption (Article 214) and Unauthorized production and placing on the market of narcotic drugs, psychotropic substances and precursors (Article 215) can also be committed by legal entities . As perpetrators of these offenses, they are punished with a monetary penalty.

The criminal legislation of the Republic of North Macedonia protects the rights and freedoms of the citizens of the Republic. Its main goal is to protect the individual values of citizens and social values from the most serious and therefore, the most dangerous violations of law by prescribing criminal offenses with criminal sanctions for their perpetrators and prescribing the general principles of prosecuting perpetrators (Carvalho, H. 2017). This goal is achieved by preventive influence on possible perpetrators of criminal offenses, by repression of perpetrators through the imposition of criminal sanctions, and educational influence on perpetrators aimed at refraining from committing crimes in the future, and with the same goal towards other citizens.

Health is the highest value of a living person, and the right to health care is a function of the protection of the right to the physical and moral integrity of the person as inviolable constitutional values (article 10 and 11 of the Constitution of the Republic of North Macedonia). The brief analysis of criminal offenses against people's health, carried out in this paper, points to the conclusion that the legal system of the Republic of North Macedonia provides conditions for the effective protection of the health of the citizens of the Republic from the most serious forms of its endangerment, which are sanctioned as criminal offenses by the Criminal Code. This protection is achieved, first of all, by preventing the commission of criminal offenses against people's health, and then by the educational influence of the imposed sanctions on the perpetrators of those offenses and on other citizens.

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