Summary of doctoral dissertation

"Criminal liability of a doctor in connection with medical activities"

Every person, regardless of their financial situation, has the right to access health services, and this right is associated with the state's obligation to provide health services. At the same time, every person undergoing treatment wants to trust that they will receive medical care that suits their individual situation and bringing positive health benefits. Criminal law problems concerning issues related to broadly understood medical matters have for many years been the subject of numerous statements of the doctrine and jurisprudence, and at the same time they constitute an area that gives rise to new legislative problems and often gives rise to ethical and legal dilemmas expressed not only in the medical and legal environment, but also in society.

The seriousness of the issue of criminal liability for negative consequences for the life and health of patients resulting from medical activities undertaken by a doctor is determined primarily by its specific nature, because criminal law analyzes the behavior of a person who acts to save a specific legal good, but such action is taken in violation of the rules of conduct related to the provision of health services. Consequently, behavior intended to protect human life or health against violation or exposure to danger constitutes an attack on such legal rights. Moreover, the course of medical processes can only be determined with a high degree of probability, not certainty. It is also important to note that medical treatment is interdisciplinary in nature, and is characterized by the phased nature of activities and cooperation in the treatment process with other specialists. This, in turn, causes particular complexity in the issue of his criminal liability, including, and perhaps primarily, in establishing the existence of an attributable causal relationship between the behavior of a specific doctor and the negative effect on health or life, which is an issue that the authorities of criminal proceedings must face. Incurring criminal liability is conditioned by the fulfillment of a number of precisely defined conditions and the need to distinguish, in a specific medical case, a violation of the rules of conduct with legal interest from a medical failure. For criminal liability, it is necessary to state that if the assessed act of the doctor had not occurred, such a result would not have occurred.

This study is intended to present the basics and principles of criminal liability of doctors in connection with the negative consequences for the health and life of patients resulting from the medical activities performed and to present the issues and problems related to the criminal liability of doctors as a result of such activities performed from the moment of conception of human life until the moment of death. Starting from an attempt to establish the basic - from the point of view of the subject of the dissertation - terminology, and therefore primarily "health

services", "medical activities", "therapeutic activities", "therapeutic procedure", it remains necessary to define the scope of the definition of the term "medical error" and analyze such scope through the prism of judicial practice. It is difficult to analyze the indicated problematic scope without establishing the terminological relationship between the concepts of "medical error", "violation of the rules of conduct with legal interest" and the term "failure in treatment". Medical error, one of the basic concepts in the field of medical law, occurs when the doctor's behavior is contrary to the precautionary rules applicable in a specific situation resulting from current medical knowledge and professional practice, while constant noticeable progress in medicine and the dynamics of changes in medical knowledge means that the term medical error must be subject to additional specification conditioned by the temporal factor by referring to the specific time of the assessed behavior of the doctor. The statement that a medical error can only constitute conduct contrary to the rules of lege artis leads to the conclusion that proper conduct and compliance with the principles of medical knowledge and professional practice are not such an error, even if it causes negative consequences for the patient's life or health. In this respect, a division of medical error into four main types will be presented: diagnostic error, therapeutic error, technical error and organizational error, and the analysis of individual types of error will take place with particular emphasis on medical cases recorded in judicial practice.

Moving on to the issue of criminal liability of a doctor, it was analyzed both through the prism of a negative effect on the life or health of a patient, which is a characteristic of a specific type of prohibited act and resulting from a medical error, but also through the prism of such a negatively valued effect resulting from the doctor's failure to comply with the rules applicable to him in dealing with legal goods. Attributing criminal liability requires establishing the implementation of all other elements of the crime structure, including the causal relationship between the doctor's behavior and the negative consequences for health or life. The criminal law evaluation of such behavior is based on one or more provisions of the special part of the Penal Code, which lists particular types of prohibited acts against life or health. The categories of charges most frequently brought against doctors include crimes of unintentionally exposing a patient to a direct danger of loss of life or serious bodily injury (Article 160 of the Penal Code), as well as causing serious (Article 156 of the Penal Code) or light (Article 157 of the Penal Code) bodily injury. Moreover, a relatively common legal qualification in practice is Art. 155 of the Penal Code, penalizing unintentional manslaughter. Attributing criminal liability to a doctor depends not only on the determination that the assessed behavior is an unlawful, punishable, reprehensible and culpable act, but also by establishing that the action or omission undertaken by him resulted in an external change in the form of a violation or exposure to a

legal interest in the form of human life or health, and also by stating that there is a causal relationship between such behavior and the negative effect. The condition for criminal law assessment is the existence of a causal relationship between such behavior and a change in the patient's life or health, constituting a sign of the effect of a specific type of prohibited act directed against human life or health. The study also analyzes the issue of a doctor's liability for a consequential crime committed through omission, and therefore the focus was shifted to the person of a doctor who holds the position of guarantor of no negative consequences for human life or health and the criminal law evaluation of the doctor's behavior on the basis of the specific relationship resulting from Art. 2 CC , as well as the issue of criminal liability of a doctor for behavior that, although not qualified as a medical error, meets the criteria specified in a specific type of prohibited act directed against human life and health. The category of medical errors, which is inextricably linked to a specific part of the precautionary rules relating them to the professional nature of medical activities, does not lead to a limitation of the criminal liability of doctors providing health services for negative effects on the life or health of the patient, only to a violation of the rules of lege artis, because the doctor may be liable also liable for behavior that does not constitute the term "medical error". Violation of the rules of caution that are beyond the scope of this error, and which are not strictly "medical" in nature, may also lead to negative consequences for the patient's legal rights, which are a characteristic feature of a specific type of prohibited act, and thus may lead to criminal liability of the doctor.

The applicable legal system provides for a general obligation to provide assistance to a person in danger, and the medical obligation to provide assistance is also specified in Art. 30 of the Act on the professions of doctor and dentist. However, the criminal liability of a doctor cannot be separated from the principle of guilt and cannot be based solely on the assessment of the occurrence of a negative effect on the patient's life or health. It is also impossible not to notice that one of the basic rights of the patient is the right to choose the form and scope of medical treatment. The considerations will present the conditions for the patient's legal and effective consent to a specific therapeutic activity, as well as the consequences of failing to obtain such a declaration. Next, a catalog of situations excluding criminal law assessment of the implementation of a therapeutic activity without the patient's consent will be presented. If the patient, exercising his/her autonomy, refuses to give legally relevant consent, the obligation of the doctor acting as a guarantor to take specific actions does not become effective. A different assessment should be made in the case of a situation where the patient expresses an objection to a specific therapeutic activity, but such an objection has no legal value.

The last part of the study will discuss issues at the intersection of law and ethics, regarding the limits of treatment and the doctor's right to refuse or withdraw from providing health services. There is no doubt that the basic duty of a doctor is to save human life and health, but the question remains how long a doctor should continue to provide health services, and when he can (or even should) stop them without exposing himself to criminal liability. In this context, one of the most controversial legal medical interpretation problems remains the issue of persistent therapy and the so-called living will. Undertaking therapeutic activities by a doctor is conditional on the patient's prior consent, which is an externalized manifestation of the subject's will. The pro futuro declaration of will allows for the exercise of the right to self-determination, providing the patient with a kind of guarantee that even if he or she loses the ability to give informed consent, he or she will not be treated in a manner unacceptable to him or her. Therefore, an attempt was made on the study pages to determine the scope of the doctor's obligation to such statements and the conditions for its legal effectiveness.

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