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CRIMINAL LAW PROTECTION OF HUMAN HEALTH IN THE REPUBLIC OF SERBIA WITH SPECIAL EMPHASIS ON CRIMINAL OFFENSES RELATED TO THE PRACTICE OF MEDICINE

Health represents one of the fundamental human rights, protected both at the international and national levels. In the Republic of Serbia, the right to health is guaranteed by the Constitution, while criminal law protection of public health is ensured through the provisions of the Criminal Code. This paper places special emphasis on criminal offenses related to the performance of medical activities. Through the analysis of these offenses, the paper highlights key issues within the normative framework and the application of the law, as well as contentious provisions that raise dilemmas in legal theory and practice.

Keywords: *right to health, criminal law protection, medical practice, Criminal Code.*

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1. Introduction

The health of individuals, as one of the fundamental social goods, is afforded special legal protection, both at the constitutional and criminal law level. Considering that the right to health constitutes a fundamental human right, indispensable for a dignified life and the full realization of all other rights (Petkovska, 2023:14), criminal law intervention becomes imperative in cases of serious violations of this protected interest, particularly in the context of the provision of medical care and healthcare services.

The paper analyzes criminal offences directly related to the practice of the medical profession, the commission of which endangers individual health and undermines public trust in the healthcare system. Special attention is given to the criminal offences of medical malpractice, failure to provide medical assistance, as well as quackery and unauthorized pharmaceutical practice.

The analysis is grounded in sources of positive law, judicial practice, and relevant scholarly literature, with the aim of clarifying the boundaries between professional error and criminal liability. Particular emphasis is placed upon the conceptual ambiguities surrounding terms such as "medical assistance" and "professional qualifications," as well as on the divergent interpretations of the criminal law status of physicians and other healthcare professionals. Based on these considerations, the paper highlights the necessity for consistent application of the law, alongside the imperative of more precise legal regulation in certain areas.

2. The right to health in international law

The pursuit of health constitutes a fundamental human aspiration, as it represents a prerequisite for the preservation of life itself. Its impairment may result in death, which is why health is often regarded as an integral component of the right to life. As a natural right, inherent to every living being, the right to health is indisputably one of the core principles of human rights (Gangbo, 1979: 41). This is particularly emphasized in the founding of the World Health Organization (WHO), whose Constitution provided, for the first time, a comprehensive definition of health and explicitly recognized it as a human right. The preamble to the WHO Constitution affirms that the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition (Constitution of the World Health Organization, United Nations, Treaty Series, vol. 14, p. 185.).

In international law, the primary sources of the right to health are treaties. All states that currently constitute the international community are parties to at least one international instrument that affirms this right. Health is the subject of legal regulation because it represents one of the fundamental values and essential interests for human life and the enjoyment of other human rights.

While the Universal Declaration of Human Rights of 1948 occupies a foundational role in the evolution of human rights within the modern international community, it cannot be said to have exerted a particularly significant influence on the historical development of the human right to health, unlike the Constitution of the World Health Organization. Specifically, Article 25 of the Declaration affirms that everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control (Toebes, 2015: 36-40).

The right to health is articulated in multiple international human rights instruments. Notably, Article 5(e) of the International Convention on the Elimination of All Forms of Racial Discrimination mandates that States Parties undertake to prohibit and eradicate racial discrimination in all its manifestations, and to guarantee to all individuals equality before the law, irrespective of differences, with respect to the enjoyment of a wide array of rights, explicitly including "the right to health, medical care, social security, and social services."

Article 12 of the Convention on the Elimination of All Forms of Discrimination against Women addresses the issue of women's health care by obligating States Parties to eliminate discrimination against women in the field of healthcare, in order to ensure, based on equality between men and women, the availability of health services, including those related to family planning. Furthermore, it requires states to ensure that women have access to appropriate healthcare services related to pregnancy, childbirth, and the postnatal period, including the provision of free services when necessary. The Convention on the Rights of the Child addresses the right to health in detail, particularly in Article 24, which obligates States Parties to recognize the right of every child to the enjoyment of the highest attainable standard of health and to facilities for the treatment and rehabilitation of health. Moreover, states are required to ensure that no child is denied access to healthcare services and to respond appropriately to eliminate traditional practices harmful to the health of children. To achieve these rights, states are expected to promote and support international cooperation, with particular emphasis on developing countries.

The development of the right to health has also been influenced by the European Social Charter, the African Charter on Human and Peoples' Rights, and the Additional

Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights. For instance, the right to health is articulated in Article 11 of the European Social Charter as the right to health protection, which may be realized through the following measures:

- the elimination, as far as possible, of the causes of ill-health;
- the provision of advisory and educational services aimed at improving health and fostering personal responsibility for health;
- the prevention, as far as possible, of epidemic, endemic, and other diseases.

The right to the enjoyment of the highest attainable standard of physical and mental health is also guaranteed to every individual by the African Charter on Human and Peoples' Rights, specifically in Article 16. Moreover, the Charter imposes an obligation on States Parties to take the necessary measures to protect the health of their peoples and to provide medical care in the event of illness (African Charter on Human and Peoples' Rights, op. cit. (note 94)).

The right to health is regulated in detail in the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Cavallaro, 2004: 227). Namely, the right to health is defined as a public good that states are obligated to recognize, as the right to enjoy the highest level of physical, mental, and social well-being. Furthermore, the Protocol prescribes the following measures to ensure the realization of the right to health: universal access to primary healthcare services; extension of healthcare services to all individuals within the jurisdiction of the state; universal immunization against the most common infectious diseases; prevention and treatment of endemic, occupational, and other diseases; education of the population on the prevention and treatment of health issues, as well as meeting the healthcare needs of the most vulnerable and marginalized groups in society (Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights „Protocol Of San Salvador", Department of International Law, OAS, https://www.oas.org/juridico/english/treaties/a-52.html (accessed July 13, 2025)).

Nevertheless, the paramount international instrument safeguarding this human right is the International Covenant on Economic, Social and Cultural Rights (ICESCR), which, under Article 12, unequivocally affirms that every individual is entitled to the enjoyment of the highest attainable standard of physical and mental health (Marks, 2013: 7). In order for health to be afforded the utmost degree of protection and realization, it is imperative that it be accorded the status of a right. Such status confers upon the entitlement a universally recognized societal significance, delineates a minimum threshold of

moral obligation to be observed, and establishes the requisite accountability mechanisms for non-compliance.

Given the immeasurable importance of human health for individual life, the functioning, and the survival of society, the burden a state must bear to ensure its protection is considerably less than the burden it would face in the event of a widespread threat or loss of health among the population. The critical significance of public health for the daily functioning of society was vividly demonstrated by the crisis precipitated by the COVID-19 pandemic.

The right to health encompasses the right to make autonomous decisions concerning one's own health and body, including sexual and reproductive freedom, as well as the right to be free from external interference, specifically, freedom from torture and medical procedures conducted without personal consent, thus comprising both rights and obligations. Conversely, it also entails the right to a healthcare system that ensures equal opportunities for all individuals to enjoy the highest attainable standards of health (Đipalo, 2023: 225).

Article 12 of the ICESCR obliges states to develop a national strategy based on the principles of accountability, transparency, and the independence of the judiciary, as guarantees for the effective realization of the right to health. The health strategy should determine the resources that will enable the enjoyment of the right to health, as well as indicators to monitor the fulfillment of the obligations undertaken, not only at the national but also at the international level (General Comment No. 14, op. cit. (note 952), paras. 53–57).

With regard to the protection of the right to health, states undertake the obligation to implement specific measures to ensure equitable access to healthcare and related services, while safeguarding that the availability, accessibility, acceptability, and quality of healthcare facilities, goods and services are not undermined by potential privatization of the health sector. Moreover, states are required to guarantee appropriate standards of education, professional competence, and ethical conduct of medical personnel, as well as to prevent certain social and traditional practices from impeding access to prenatal and postnatal care and family planning, as well as to protect all vulnerable and marginalized groups by adopting targeted measures (General Comment No. 14, para. 35).

States are required to establish a national health policy within the legal framework, including a detailed plan for the realization of the right to health (General Comment No. 14, para. 51). This entails ensuring the provision of healthcare services, including immunization against certain communicable diseases, equitable access to specific resources, together with guaranteeing the professional training of medical personnel and an adequate number of medical facilities. Furthermore, it is necessary to establish a system

of public, private, or mixed health insurance that is accessible to all. The conduct of medical research and the dissemination of certain information also form part of the obligations undertaken by states (General Comment No. 14, op. cit. (note 952), para. 36).

3. Constitutional protection of health in Serbia

The Constitution of the Republic of Serbia, adopted in 2006, guarantees the protection of health in Serbia as an important aspect of human rights and social policy. Specifically, in order to ensure the economic and social security of individuals, the right to health is classified among economic and social rights, the essence of which lies in the state's obligation to enable individuals, as holders of this right, to enjoy and exercise it (Milosavljević, Popović, 2009: 163–165).

Article 68 of the Constitution of our country stipulates the right to healthcare, granting every individual the right to the protection of physical and mental health. Thus, healthcare is ensured for all citizens of the Republic of Serbia, particularly for children, pregnant women, mothers, and the elderly (Constitution, Official Gazette of RS, No. 98/2006).

The constitutional protection of health in Serbia is characterized by: Universality – the right to healthcare is guaranteed to every individual regardless of personal characteristics; Special protection of vulnerable groups – the state has an obligation to provide additional protection to the most vulnerable categories of the population (children, pregnant women, mothers, and the elderly); Mandatory health insurance – the Constitution guarantees all citizens the right to health insurance; Non-discrimination on the basis of poverty – the Constitution explicitly prohibits the denial of healthcare due to inability to pay.

Based on a systemic interpretation of the constitutional provisions guaranteeing the right to health protection, it can be concluded that they are not aligned with certain key legal standards of the European Union, as neither a high level of human health protection nor the highest attainable standard, which the EU legal system aims to achieve, are mentioned. This implies that health, even as a human right, is neither treated as a priority nor as a factor of economic growth (Slavnić, 2013: 37), which may affect the degree of realization of socioeconomic rights, dependent on the economic status of society. Namely, this body of rights, including the right to health, may become merely a list of aspirations if there is no adequate economic condition, since they often become enforceable only after certain court decisions (Slavnić, 2007: 361–362).

Nevertheless, it is indisputable that the state holds a fundamental responsibility in safeguarding public health as a collective good, one that cannot be left solely to individuals or the market. It is the state that bears the obligation to systematically protect, promote, and preserve the health of the entire population. This obligation is fulfilled through the following measures: enacting legislation and regulations governing healthcare (Article 68 of the Constitution of the Republic of Serbia); introducing mandatory vaccinations, emergency measures, quarantine, and related actions (Article 2 of the Law on the Protection of the Population from Infectious Diseases); establishing and financing public health institutions, and ensuring accessible and equitable healthcare for all citizens (Article 6 of the Healthcare Act); collecting, analyzing, and publishing data on the health status of the population, and adopting measures based on epidemiological and statistical assessments (Article 7 of the Healthcare Act).

4. Legal protection of health

Given that constitutional provisions provide only a general framework for the regulation of the right to health, its substantive content and the modalities of its realization are defined by statutory law. Within both national and international legal frameworks, human health is recognized as one of the fundamental human rights and a universally protected good, thereby imposing on the state a legal obligation to safeguard it against unlawful infringements. The endangerment of health may have far-reaching implications for the safety and stability of society as a whole, as health constitutes not merely an individual interest, but a collective value requiring protection through the criminal law framework. The role of criminal law, aimed at protecting essential societal interests and serving as a mechanism for upholding public security, social justice, and fundamental human rights, is reflected in the provisions of the Criminal Code of the Republic of Serbia, which criminalize conduct that poses a threat to both individual and public health. Individuals are afforded protection under criminal law from acts of violence, inadequate medical treatment, poisoning, the transmission of infectious diseases, and other conduct that may seriously endanger health or result in fatal outcomes, in other words, when threats to health are grave, intentional, pose a risk to a larger population, or lead to severe consequences. Moreover, in instances where conduct jeopardizes not only individual health but also the health of the broader population, the application of criminal law serves as a necessary mechanism of last resort within the legal system. When the health of a segment of the population, as a public good of general societal importance, defined by its universality and indivisibility, is compromised, such harm may produce adverse effects on the wider

community. In these circumstances, the state is required to take an active role in safeguarding public health through the legal regulation of health standards, mandatory immunization, the implementation of sanitary measures, and the control of pharmaceuticals and food safety. In any case, everyone has the right to bodily integrity, which is undoubtedly a fundamentally negative right, establishing prohibitions against coercive interference with one's body; however, at the same time, it also entails positive obligations on the part of the state to undertake measures for the preservation and protection of bodily integrity (such as the right to health, the right to a healthy environment, the protection of persons with disabilities, etc.) (Kambovski, 2024: 37).

5. Criminal offences related to the practice of medical profession

Speaking generally about the right to health, it has been emphasized that this right constitutes one of the most important collective legal interests, that it is, above all, a constitutional right; however, it must be noted that in certain circumstances, particularly when the most severe forms of harm to human health occur, criminal law protection becomes necessary. In order to protect health as one of the fundamental human rights, the state is also obliged to ensure effective protection through criminal law mechanisms, providing safeguards for every individual against violations, whether those violations originate from private actors or from state authorities themselves (Matić Bošković, 2024: 135-136). The following sections provide a concise analysis of specific criminal offenses associated with the exercise of the medical profession, which serve as mechanisms for the criminal law protection of public health.

5.1. Medical malpractice (Article 251 CL)

Criminal offence of medical malpractice, as defined under Article 251 of the Criminal Code, sanctions the conduct of a medical practitioner who, during the provision of medical care, employs manifestly unsuitable methods or treatments, fails to implement appropriate hygienic measures, or otherwise acts with evident negligence, thereby causing a deterioration in the health condition of a patient. It follows from this that the offence is consequential in nature and comprises four alternatively formulated modes of commission, all of which must occur in the course of providing medical care, i.e., during treatment. The notion of treatment, in this context, encompasses the diagnosis, as well as the prescription and administration of therapy (Stojanović, 2021: 850).

Given that the modes of commission are alternatively prescribed, the *actus reus* of the offence is established when a medical practitioner, in the course of providing medical assistance, commits any one of the enumerated acts. The initial mode of commission consists in the utilization of manifestly unsuitable treatment methods, which, as a rule, occurs predominantly during the treatment phase subsequent to the establishment of a diagnosis. However, it cannot be categorically excluded that an error originating in the diagnostic phase may lead, in later stages of treatment, to the application of an inappropriate therapeutic intervention. Proper medical treatment necessitates adherence to the established principles of medical science and professional standards; accordingly, a therapeutic agent is generally deemed inappropriate if, pursuant to medical standards, it is not indicated for the treatment of the specific condition and, as such, may result in harmful consequences rather than therapeutic benefit. Nevertheless, certain views assert that even agents indicated for the treatment of particular conditions may be considered inappropriate if their administration would exacerbate another pre-existing condition in the patient, insofar as the contraindicating effects outweigh the intended therapeutic effects. In any event, for the *actus reus* of the criminal offence to be present, the therapeutic agent must be manifestly inappropriate, entailing a high degree of unsuitability, specifically, a gross medical error that flagrantly contravenes the rules of medical science and professional practice (Stojanović, 2021: 850). The second mode of commission of this criminal offence consists in the employment of an evidently inappropriate method of treatment; in this regard, this mode is substantially analogous to the previously described mode involving the use of an inappropriate therapeutic agent, with the distinction that the concept of treatment is broader than that of the therapeutic agent, as certain treatments may be administered without the use of any agents. Proper treatment necessarily entails adherence to established standards of cleanliness; therefore, particular attention must be given to the application of hygienic measures during the treatment process. Accordingly, the legislature has prescribed, as an alternative mode of commission of this offence, the failure of a medical practitioner to implement appropriate hygienic measures in the course of treatment. However, whereas the application of an evidently inappropriate therapeutic agent and the use of an inappropriate method of treatment constitute acts of commission, this third mode of commission of the failure to apply appropriate hygienic measures constitutes an act of omission. The fourth and final mode of commission of this criminal offence is characterized by generally evident negligent conduct. From the formulation provided, it is evident that this constitutes a general and relatively broad category of the mode of commission of the criminal offence, which may be effected through either an act of commission or omission. This primarily encompasses instances such as a superficial patient examination that results in a failure to diagnose the illness or, for example, the issuance

of an incorrect diagnosis; the omission of standard diagnostic or therapeutic procedures; failure to implement preventive measures; as well as neglecting certain monitoring or control measures, among others. In all cases, it is essential that the conduct be manifestly negligent, implying a significant degree of culpable negligence.

In both legal theory and practice, the statutory phrase "in the provision of medical assistance" may present interpretative challenges. Specifically, one view holds that this criminal offence can only be committed through actions intimately connected with the actual provision of medical care or treatment, thereby excluding instances of negligent conduct by a physician in surgical procedures performed solely for aesthetic purposes, while another perspective advocates for a broader interpretation of the term, understanding it as "in the exercise of medical activity" (Srzentić et al., 1986: 411). The authors of this paper align with the latter interpretation, maintaining that this legal provision should be interpreted more broadly, given that, in contemporary medical practice, a significant number of interventions are undertaken not solely for the purpose of treatment but also for diagnostic analyses, preventive measures, and similar purposes. Examples include vaccination, routine medical examinations, blood sampling for laboratory analysis, among others. This broader interpretation is further supported by the fact that the legislator has designated the passive subject of the offence as "any person" rather than a "patient".

This constitutes a consequential criminal offense, wherein the objective element of the incrimination is the deterioration of the health condition of an individual. It is requisite that a causal nexus be established between the perpetrating act and the resultant aggravation of the health status. Such deterioration may manifest as a worsening of the disease for which treatment was administered, a deterioration of an untreated condition, the infliction of bodily harm, the onset of an illness, or comparable outcomes. In any event, for the satisfaction of this objective element, it is immaterial whether the deterioration occurred to a lesser or greater extent (Srzentić et al., 1986: 414).

The perpetrator of this fundamental form of the criminal offense can only be a medical doctor. Nonetheless, divergent interpretations exist in both legal theory and practice; thus, according to a narrower interpretation, the perpetrator is limited to an individual who holds a medical degree and meets the statutory requirements for the independent practice of medicine. Conversely, a broader interpretation include dentists, microbiologists, toxicologists, and other medical professionals who may not be directly involved in patient treatment but engage in healthcare activities related to treatment. Finally, certain opinions maintain that any physician may be considered the perpetrator of this offense, irrespective of whether they are currently practicing medicine, employed, retired, or

whether they perform duties within their specialty or general practice – the essential criterion is that the individual is "providing medical assistance" in the given case (Lazarević, 2006: 664). It is important to note that the Criminal Code does not explicitly define this term neither in the provision concerning this criminal offense nor in Article 112 of the Criminal Code, which provides definitions of certain terms used therein.

For the basic form of the offense, a custodial sentence of imprisonment ranging from three months to three years is prescribed by law.

The second form of this criminal offense, as stipulated in paragraph 2 of the same article, prescribes that the same penalty shall apply to other healthcare workers who, while providing medical assistance or care, or performing other healthcare activities, act with obvious negligence and thereby cause the deterioration of another person's health condition. Thus, this form of the offense differs from the basic form both in terms of the perpetrator and the manner of execution. Specifically, this form criminalizes the negligent conduct of other healthcare personnel, primarily referring to medical technicians, nurses, laboratory assistants, and others. These individuals assist physicians in treatment or in the implementation of therapeutic procedures prescribed by a doctor and must adhere to the standards of medical science and professional ethics. The *actus reus* of this offense consists of providing medical assistance, care, or performing other healthcare activities. As with the basic form, it is necessary that the perpetrator acts with obvious negligence and that such conduct results in the consequence of deterioration of the health status of another person.

For both forms of this criminal offense, intent is required with regard to culpability, although it should be emphasized that, given the nature of the offense, conditional intent is presumed. Accordingly, the perpetrator must be aware that they are acting negligently and that they may commit the offense, and must also accept the resulting consequence.

The third form of the criminal offense, prescribed in paragraph 3 of the same article, differs from the previous two forms with regard to the form of culpability. It constitutes a negligent form of commission of the offense. The perpetrator is aware that they are acting negligently but recklessly assumes that the consequence will not occur (conscious negligence), or lacks such awareness but, given the circumstances, there exists a possibility and duty to foresee the occurrence of the consequence (unconscious negligence). For this privileged form of the criminal offense, a fine or imprisonment of up to one year is prescribed.

In addition to the aforementioned, it is important to emphasize that there exist more severe forms of this criminal offense, namely qualified forms characterized by

grievous consequences, for which harsher penalties are prescribed, which should be differentiated depending on whether the offense was committed intentionally or negligently. Specifically, if, as a result of the commission of this offense with intent, the victim sustains serious bodily injury or suffers a severe deterioration of health, the perpetrator shall be punished by imprisonment ranging from one to eight years, while in the event that the victim dies as a consequence, the penalty shall be imprisonment from two to twelve years (Article 259, paragraphs 1 and 2 of the Criminal Code). Conversely, if the offense was committed through negligence, and the victim sustains serious bodily injury or suffers a severe health impairment, the perpetrator shall be punished by imprisonment of up to three years; should the victim die under such circumstances, the penalty shall be imprisonment ranging from one to eight years (Article 259, paragraphs 3 and 4 of the Criminal Code).

5.2. Failure to Provide Medical Assistance (Article 253 of the Criminal Code)

The Code of Medical Ethics obliges every physician to provide emergency medical assistance at all times and in all places to any person in need of such aid, while a breach of this duty, under certain conditions, may constitute grounds not only for professional and ethical liability but also for criminal liability. The criminal offense of Failure to Provide Medical Assistance, as defined in Article 253, paragraph 1 of the Criminal Code, in its basic form criminalizes the conduct of a physician who, contrary to their professional duty, refuses to provide medical assistance to a person in need, where such person is in immediate danger of death, or at risk of sustaining serious bodily injury or severe deterioration of health. The *actus reus* of this offense consists in the refusal to provide medical assistance and, as such, represents a typical omission-based offense. This refusal may be manifested in various forms, including: an explicit denial by the physician to render aid; failure to respond to a call for help; promising to provide assistance but failing to do so in practice; neglecting to intervene even when no request for help has been made; failing to refer the patient to an appropriate medical institution; and similar acts or omissions (Lazarević, 2006:668). Therefore, in all respects, the omission to provide medical assistance must be committed with intent. Although it may not appear so at first glance, this offense gives rise to a considerable number of theoretical and practical dilemmas. First and foremost, although the offense requires the perpetrator to possess a specific professional status, the question arises as to whether any physician can be considered a perpetrator within the meaning of this criminal offense. Just as with the offense of Negligent Provision of Medical Assistance, the legislator has not defined the term

"physician" within the provision. For this very reason, the definition of the term "physician" varies and ranges from the broadest interpretation, according to which a physician is any individual who has obtained a degree from a medical or dental faculty (Đorđević, citing Jovašević 2014:177), through a more restrictive interpretation that necessitates the individual's active engagement in medical practice (Čejović, 2008: 631), up to the narrowest interpretation which further requires that the individual be duly registered with the Medical Chamber of Serbia (Đorđević, citing Mrvić-Petrović 2011:176). Furthermore, an additional issue arises as to whether a retired physician may be considered a perpetrator. In this regard, one may agree with the view that this constitutes a factual question, requiring assessment of whether the physician in question had only recently ceased practicing or had been retired for a long time, whether they remain physically and mentally capable of providing assistance despite retirement, or whether they are no longer capable of doing so due to age or health conditions (Đorđević, 2019: 250). In practice, dilemmas may also arise as to whether, for example, a physician who completed medical studies abroad but has not nostrified their diploma, or a physician against whom a security measure prohibiting the performance of a profession, activity, or duty has been imposed, may be considered perpetrators of this criminal offense. In this regard, it is reasonable to concur with the opinion that such individuals cannot be deemed capable of committing this offense. The first category is excluded due to the fact that the nostrification process entails the fulfillment of additional legal and procedural requirements, thereby precluding such individuals from lawfully practicing medicine. The second category is excluded because recognition of such capacity would result in a legal conflict between the physician's obligation to observe the imposed security measure and the general duty to provide medical assistance (Đorđević, 2019: 250). Finally, a legitimate question arises as to whether a physician whose specialization is entirely unrelated to the medical field required in the specific emergency may nonetheless be held criminally liable. In this respect, the prevailing view in legal theory and medical ethics is affirmative; namely, that such a physician, for example a dentist or ophthalmologist, is obliged to provide emergency assistance to a person suffering a cardiac arrest, within the limits of their knowledge and capabilities (Đorđević, 2019: 249).

The basic form of the *actus reus* of this criminal offense consists in the refusal to provide medical assistance to a person in need of such assistance, who is in imminent danger of death, or in danger of suffering serious bodily injury or severe impairment of health. Given that this is an offense of omission, the act is reflected in the failure to render aid, i.e., the failure to undertake actions that would eliminate the imminent danger. As explicitly stated in the criminal provision, the danger must be imminent, not only in relation to life-threatening situations but also in terms of the potential for serious bodily harm

or substantial deterioration of health. The forms of medical assistance may vary depending primarily on the nature of the danger faced by the individual, as well as on the physician's specific ability to assist under the given circumstances. In any event, a physician is obliged to provide all possible assistance to eliminate the immediate danger at that moment; thus, it should be emphasized that this obligation extends beyond narrowly defined medical assistance and encompasses general medical aid, including that typically administered by other healthcare professionals in ordinary conditions. Considering the wide range of situations that may give rise to imminent danger, and correspondingly the various methods of providing medical assistance, a comprehensive analysis of this matter exceeds the scope of this discussion. Nevertheless, it may be concluded that, in assessing whether a physician provided assistance and whether the danger was indeed imminent, one must primarily be guided by the standards of medical science and practice, and tailor the assessment to the specific circumstances of each individual case.

The passive subject of this criminal offense may be any person in need of medical assistance who is in imminent danger of death or in danger of sustaining serious bodily injury or severe impairment of health. Therefore, the cumulative fulfillment of two conditions is required: (1) that the person is in need of medical assistance, and (2) that the person is in such imminent danger.

The basic form of this criminal offense is punishable by a monetary fine or imprisonment for up to two years.

A more serious form of the offense exists where the failure to provide medical assistance results in serious bodily injury or severe health impairment of the endangered person. This form is punishable by a term of imprisonment ranging from six months to five years. Finally, the most serious form of this criminal offense occurs when the failure to provide medical assistance results in the death of the person. In such cases, the prescribed punishment is imprisonment for a term of one to eight years. For both aggravated forms, it is required that the offender acted negligently (culpable negligence) with respect to the more serious consequence.

5.3. Quackery and Unauthorized Pharmaceutical Practice (Article 254 of the Criminal Code)

Quackery and unauthorized pharmaceutical practice constitute particularly perilous forms of endangerment to human health, perpetrated by individuals lacking the requisite professional qualifications and legal authorizations. Such persons, by unlawfully providing medical or pharmaceutical services, may inflict serious harm upon the life and health of patients. Although these do not constitute classical criminal offenses committed within the scope of medical practice, their potential to erode public trust in the healthcare

system necessitates a criminal law response aimed at safeguarding public health. Accordingly, the following section offers a concise analysis of this specific criminal offense.

The *actus reus* of the criminal offence of quackery is reflected in engaging in treatment or providing other medical services by a person who does not possess the appropriate professional qualifications. The legislator employs the term "engages in", which raises the question of whether the commission of a single act is sufficient to constitute the offence, or whether it requires at least two separate acts, i.e., a repeated course of conduct. According to older legal doctrine, this expression was interpreted as indicative of a continuing offence, committed as a form of occupation or habitual activity, whereby the prevailing view was that the perpetrator must act with a willingness or readiness to repeat the incriminated acts, and that the number of actual acts performed (whether one or more) was immaterial (Srzentić et al., 1986: 421). In contrast, contemporary legal theory and judicial practice generally uphold the view that the conduct in question must have occurred at least twice, that is, that the term “engages in” implies repetition over time, thus constituting a form of habitual or ongoing activity (Vuković, 2024: 316). It is universally accepted among legal scholars that the presence or absence of remuneration for the medical services rendered is legally irrelevant for the existence of this offence. However, it should be noted that earlier legislative frameworks (prior to the enactment of the 2006 Criminal Code) did prescribe pecuniary gain as a qualifying circumstance for a more serious form of this offence. A further point of contention in practice concerns whether the repeated provision of treatment must necessarily involve multiple patients, or whether it also includes the repeated provision of services to a single individual. The prevailing interpretation is that the notion of "engaging in" pertains to the repetition of acts of treatment, and that the criminal offence is constituted even when multiple acts of treatment are carried out on a single person, provided that such treatment involves distinct medical conditions, rather than a continuous treatment of a single illness (Vuković, 2024: 317).

The term treatment, as used in this section and in the preceding parts of this paper, shall be understood to mean the undertaking of all medical measures that, within the framework of health care, are performed by individuals who have completed medical or dental studies (Lazarević, 2006: 670), which includes the establishment of a diagnosis, the prescription, and administration of therapy (Stojanović, 2021: 850). The term provision of other medical services shall encompass all those services which, within the scope of their professional duties, are performed by other healthcare professionals (medical technicians, nurses, midwives, caregivers, and the like).

The perpetrator of this criminal offence may be a person who lacks the requisite professional qualifications. In practice, however, certain ambiguities may arise, particu-

larly concerning what, in specific circumstances, constitutes adequate professional qualifications. Legal literature raises the question of whether an individual who provides medical treatment without the relevant specialization, for example, a general practitioner performing surgery, conducting a gynecological examination, or delivering a baby, may be considered a perpetrator of this offence. The prevailing view is that such conduct does not constitute the criminal offence of unauthorized practice of medicine, but may potentially amount to the offence of negligent medical treatment (Ranđelović, 2019: 242, citing Tahović: 263), for a person holding a general medical degree cannot automatically be presumed to perform treatment or provide medical services incompetently merely due to a lack of specialized training. Therefore, such a person should not be classified as a quack or unlicensed practitioner, even if a particular subspecialty is lacking (Ranđelović, 2019: 242, citing Srzentić et al.: 484).

The act constituting the criminal offence of unauthorized pharmaceutical practice, as criminalized under Article 254, paragraph 2 of the Criminal Code, consists of engaging in the compounding or dispensing of medicines without the requisite professional qualifications. These are two alternatively enumerated actions, which may be committed by one or more persons who lack the required educational background. The term medicine refers to substances intended for treatment, although they may not possess the properties of a medicine (Stojanović, 2021: 847). However, it is essential to distinguish medicines from other categories such as medical devices, veterinary drugs, dietary supplements, biocidal products, and cosmetic products (for further discussion, see Vuković, 2024: 343–350).

The perpetrator of this criminal offence is any individual who compounds or dispenses medicinal products without possessing the legally prescribed qualifications, namely a degree from a faculty of pharmacy.

For this criminal offense, whether in the form of quackery or unauthorized pharmaceutical practice, the law prescribes either a monetary fine or a term of imprisonment of up to three years and the criminal liability for this offense may arise only in cases of intent.

In addition to the aforementioned, it should also be noted that this criminal offence includes aggravated forms, i.e., forms qualified by serious consequences, for which harsher penalties are prescribed. Namely, if the commission of this offence results in serious bodily injury or a severe impairment of health to the injured party, the offender shall be punished by imprisonment for a term ranging from one to eight years. In the event that the offence results in the death of the injured party, the prescribed penalty is imprisonment for a term ranging from two to twelve years (Article 259, paragraphs 1 and 2 of the Criminal Code).

6. Concluding remarks

Criminal law protection of health through the regulation of the medical profession plays a pivotal role in maintaining the safety and trust in the healthcare system. The legal definition and sanctioning of medical malpractice and quackery constitute significant mechanisms for the protection of patients' rights and the prevention of harmful consequences arising from irresponsible conduct in medical practice.

The analysis of relevant statutory provisions and judicial practice demonstrates the necessity of clearly distinguishing criminal liability from other forms of legal sanctions to prevent abuse of rights and improper qualification of acts. The effective application of the law depends on the expertise and integrity of both judicial authorities and medical professionals. Furthermore, the continuous harmonization of legislation with contemporary medical and social circumstances contributes to improved prevention and protection of health.

Ultimately, the synergy between legal theory and practice constitutes a fundamental tool for enhancing the quality of healthcare and safeguarding the fundamental rights of patients.

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