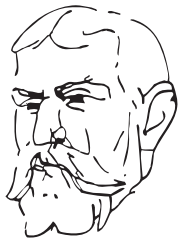
Wiadomości Lekarskie

Czasopismo Polskiego Towarzystwa Lekarskiego



Pamięci
dra Władysława
Biegańskiego

TOM LXXII, 2019, Nr 11 cz. I, listopad

Rok założenia 1928

Aluna Publishing

Ministry of Science
and Higher Education
Republic of Poland

The journal Wiadomości Lekarskie is financed under Contract No. 888/P-DUN/2019
by the funds of the Minister of Science and Higher Education.

The Journal has been included in the register of journals published by The Polish
Ministry of Science and Higher Education on July 31st, 2019 with 20 points awarded.

Wiadomości Lekarskie is abstracted and indexed in: PubMed/Medline, EBSCO, SCOPUS, Index
Copernicus, Polish Medical Library (GBL), Polish Ministry of Science and Higher Education.

CONTENS / SPIS TREŚCI

PRACE ORYGINALNE / ORIGINAL ARTICLES

PRACA POGLĄDOWA / REVIEW ARTICLE

PRACA POGLĄDOWA
REVIEW ARTICLE

MEDICAL NEGLIGENCE SUBJECT TO CRIMINAL LAW

DOI: 10.36740/WLek201911118

Nataliya Gutorova[1], Oleksandr Zhytnyi[2], Tetyana Kahanovska[2]
[1]POLTAVA LAW INSTITUTE OF YAROSLAV MUDRIY NATIONAL LAW UNIVERSITY, POLTAVA, UKRAINE
[2]V.N. KARAZIN KHARKIV NATIONAL UNIVERSITY, KHARKIV, UKRAINE

ABSTRACT

Introduction: Legal liability for medical negligence should contribute to the protection of patients' rights to life and health. At the same time, unreasonably strict sanctions against physicians should be analyzed much closely. More balanced model of such liability requires serious in-depth research.

The aim of the article is to stimulate discussion about the necessity to improve the criminal legislation and judicial practice of criminal liability execution.

Materials and methods: This study is based on the analysis of international law, WHO documents, jurdicial practice and statistics, criminal and medical law legal doctrine (29 laws and papers, 97 court judgments were analyzed). Dialectical, comparative, analytic, synthetic and system analysis research methods were used, also for interpretation purposes.

Conclusions: An effective legal mechanism should ensure the timeliness and thoroughness of the investigation and prosecution of each case of medical negligence to prevent the recurrence of such consequences in the future. Legal liability (civil, disciplinary or criminal) for medical negligence is a necessary part of this mechanism. The inevitability of criminal punishment rather than its severity should be recognized as a core for the medical negligence prevention concept. That's why the long-term imprisonment for medical negligence as a form of punishment should be recognized as socially unreasonable, it cannot improve the protection of patients' life and health but leads to significant negative social complications instead.

KEY WORDS: medical negligence, medical mistake, patient rights, legal liability, criminal punishment

Wiad Lek 2019, 72, 11 cz. I, 2161-2166

INTRODUCTION

The criminal liability of medical practitioners for improper performance of professional duties, which entailed serious consequences for the patient, causes serious discussion among physicians and lawyers. Medical practice refers to activities that are constantly associated with the risk of harm to life and health of the patient. The physician conducting treatment intervenes in the functioning of organs and tissues of the human body, affects the activity of body systems (nervous, circulatory, reproductive, etc.). In many cases, saving the patient's life requires the physician to make a decision with some level of profession risk. If such a risk is justified, then in the event of adverse consequences, these circumstances exempt person from criminal liability.

It should be noted that the expectations of the patient and his relatives do not always coincide with the real possibilities of treatment. Very often such expectations are overstated. Undoubtedly, modern medicine is capable of solving many complex tasks of saving lives and restoring the health of patients. However, the complexity and in many cases stochasticity, unpredictability, or low predictability of pathological processes of the human body cause a high level of risk of medical activity. At the same time, as medical research shows, in many cases, the death of a patient or causing significant harm to his health is the result of medical mistakes. So, according to a study by researchers at Johns Hopkins University School of Medicine which was published on 03 May 2016 at BMJ that medical mistakes should rank as the third leading cause of death in the U.S., after heart disease and cancer? The authors of this research, prof. Martin Makary and research fellow Michael Daniel based on an analysis of prior research, estimate that more than 250,000 Americans die each year from medical mistakes [1]. As stated by World Health Organization (WHO), 2017, making health care safer, it is commonly reported that around 1 of 10 hospitalized patients experience harm, with at least 50% preventability [2].

Another factor that significantly affects the situation with holding physicians liable for their medical mistakes is a sharp increase in the number of lawsuits filed by patients against physicians and medical facilities in democratic countries. So, according to Christian Nordqvist, in the United States, there are between 15,000 and 19,000 medical malpractice suits against doctors every year [3]. Polish researchers reported that the number of such cases from the beginning of the 1990s to 2016 has six times increased, but only about 20% of cases revealed deviations made by doctors in the performance of their duties [4]. Researchers from Germany also noted a significant increase in such requirements and, as a result, an increase in the cost of insurance and legal services in the health sector [5].

Thus, the complexity and ambiguity of approaches to the legal assessment of medical negligence, as well as the choice of legal sanctions that the state establishes and applies for this offense, indicates that the scientific research of medical negligent subject to criminal law is timely and necessary.

THE AIM

The purpose of the article is to raise awareness and stimulate discussion about the necessity of criminal legislation and judicial practice improving in medical negligence sphere.

MATERIALS AND METHODS

This study was conducted in 2019 and is based on the International Covenant on Economic, Social and Cultural Rights, The European Social Charter, The Oviedo Convention on Human Rights and Biomedicine, European Convention for the Protection of Human Rights and Fundamental Freedoms, case law of European Court of Human Rights (ECHR), documents of WHO, criminal and medical legislation of countries such as Germany, Ukraine, Poland, Latvia, the Ukrainian General Prosecutor's Office and Supreme Court data on the criminal liability of those who committed crimes in the field of medical safety, legal doctrine in the field of criminal and medical law. Totally 29 laws and papers, 97 court judgments were analyzed.

Dialectical, comparative, analytic, synthetic and system analyses research methods were used, also for interpretation purposes.

REVIEW AND DISCUSSION

The International Covenant on Economic, Social and Cultural Rights (art. 12, p. 1) provides that the States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health [6]. The Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology, which was ratified by twenty-nine of the Council of Europe member States, provides that: parties, taking into account health needs and available resources, shall take appropriate measures with a view to providing, within their jurisdiction, equitable access to health care of appropriate quality (art. 3); any intervention in the health field, including research, must be carried out in accordance with relevant professional obligations and standards (art. 4); the person who has suffered undue damage resulting from an intervention is entitled to fair compensation according to the conditions and procedures prescribed by law (art. 24); parties shall provide for appropriate sanctions to be applied in the event of infringement of the provisions contained in this Convention (art. 25) [7].

Article 2 of The European Convention on Human Rights says that everyone's right to life shall be protected by law [8]. The ECHR has interpreted this sentence, which ranks as one of the most fundamental provisions in the Convention and also enshrines one of the basic values of the democratic societies making up the Council of Europe, requires the State not only to refrain from the "intentional" taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction (see: cases of Mccann and Others v. the United Kingdom § 147 [9], Lopes De Sousa Fernandes v. Portugal, § 164 [10], Calvelli and Ciglio v. Italy, § 48 [11], and Vo v. France, § 88 [12], Byrzykowski v. Poland, § 104 [13]).

So, in the case of Byrzykowski v. Poland, it was established that on 11 July 1999 the applicant's 27-year-old wife was about to give birth to their child. She was admitted to a hospital of the Wroclaw Medical Academy at 8 p.m. As there was no progress in the delivery and the child showed signs of heart distress, on 12 July 1999 at 10 a.m. a decision was taken to perform a caesarean section. Epidural anesthesia was administered, as a result of which she falls into a coma. All resuscitation efforts failed. The applicant's wife was subsequently transported to the intensive therapy unit, where she died on 31 July 1999. A child H. was born by a caesarean section, suffering from serious health problems, mostly of a neurological character. He requires permanent medical attention. Despite the fact that criminal, disciplinary and civil proceedings, after almost seven years no final decision in any of these proceedings has been given. In these circumstances, the Court concludes that there has accordingly been a procedural violation of Article 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. It was awarded the applicant EUR 20,000 as a compensation of non-pecuniary damage and EUR 2,000 for the costs and expenses incurred before the domestic courts and before the Court, EUR 850 paid to the applicant as compensation of legal aid, plus any tax that may be chargeable on that amount [13].

The ECHR considers that the positive obligations require States to make regulations compelling hospitals, whether public or private, to adopt appropriate measures for the protection of their patients' lives. They also require an effective independent judicial system to be set up so that the cause of death of patients, whether in the public or the private sector, can be determined and those responsible medical professionals made liable (see: cases of Byrzykowski v. Poland, § 104 [13], Lopes De Sousa Fernandes v. Portugal, § 166 [10]). However, this provision cannot and should not be understood as the need in each case to establish strict measures of criminal liability for medical negligence. In this regard, the court emphasizes that: «if the infringement of the right to life or to personal integrity is not caused intentionally, the positive obligation imposed by Article 2 to set up an effective judicial system does not necessarily require the provision of a criminal-law remedy in every case. In the specific sphere of medical negligence the obligation may for instance also be satisfied if the legal system affords victims a remedy in the civil courts, either alone or in conjunction with a remedy in the criminal courts, enabling any liability of the doctors concerned to be established and any appropriate civil redress, such as an order for damages and for the publication of the decision, to be obtained. Disciplinary measures may also be envisaged." (The case of Byrzykowski v. Poland, § 105 [13]).

Particular attention should be paid to the conclusions of the court in the case of Byrzykowski v. Poland, § 117 that, apart from the concern for the respect of the rights inherent in Article 2 of the Convention in each individual case, more general considerations also call for a prompt

Table 1. Criminal punishment for medical negligence under the criminal laws of Germany, Latvia, Poland and Ukraine

Consequences of medical negligence	Criminal punishment			
	The Criminal Code of Germany [14]	**Act of 6 June 1997, Penal Code, The Republic of Poland [15]**	**The Criminal Law of The Republic of Latvia [16]**	**The Criminal Code of Ukraine [17]**
The moderate (medium gravity bodily) injury of the victim	Imprisonment* not exceeding three years or a fine (Sec. 229)	a fine, the penalty of imprisonment or the penalty of deprivation of liberty for up to one year (Art. 157 § 3)	imprisonment for a term up to one year or temporary imprisonment, or community service, or a fine (Sec. 138 p. 1)	deprivation of the right to occupy certain positions or engage in certain activities for a term up to five years, or correctional labor for a term up to two years, or restraint of liberty for a term up to two years, or imprisonment for the same term (Art. 140 p. 1)
The moderate (medium gravity bodily) injury to a minor	imprisonment not exceeding three years or a fine (Sec. 229)	a fine, the penalty of imprisonment or the penalty of deprivation of liberty for up to one year (Art. 157 § 3)	imprisonment for a term up to one year or temporary imprisonment, or community service, or a fine (Sec. 138 p. 1)	restraint of liberty for a term up to five years, or imprisonment for a term up to three years, with deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years (Art. 140 p. 2)
Serious (grievous) bodily injury of the victim	imprisonment not exceeding three years or a fine (Sec. 229)	imprisonment for up to 3 years (Art. 156 § 2)	imprisonment for a term up to one year or temporary imprisonment, or community service, or a fine (Sec. 138 p. 1)	deprivation of the right to occupy certain positions or engage in certain activities for a term up to five years, or correctional labor for a term up to two years, or restraint of liberty for a term up to two years, or imprisonment for the same term (Art. 140 p. 1)
Serious (grievous) bodily injury to a minor	imprisonment not exceeding three years or a fine (Sec. 229)	imprisonment for up to 3 years (Art. 156 § 2	imprisonment for a term up to one year or temporary imprisonment, or community service, or a fine (Sec. 138 p. 1)	restraint of liberty for a term up to five years, or imprisonment for a term up to three years, with deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years (Art. 140 p. 2)
The death of the victim	imprisonment not exceeding five years or a fine (Sec. 222)	imprisonment for a term of between 3 months and 5 years (Art. 155)	imprisonment for a term up to five years or temporary imprisonment, or community service, or a fine (Sec. 138 p. 2)	deprivation of the right to occupy certain positions or engage in certain activities for a term up to five years, or correctional labor for a term up to two years, or restraint of liberty for a term up to two years, or imprisonment for the same term (Art. 140 p. 1)
The death to a minor	imprisonment not exceeding five years or a fine (Sec. 222)	imprisonment for a term of between 3 months and 5 years (Art. 155)	imprisonment for a term up to five years or temporary imprisonment, or community service, or a fine (Sec. 138 p. 2)	restraint of liberty for a term up to five years, or imprisonment for a term up to three years, with deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years (Art. 140 p. 2)

* Given the differences in terminology used in criminal laws, the term "imprisonment" is used with the same meaning as the term "deprivation of liberty".

examination of cases concerning death in a hospital setting. This is because the knowledge of facts and possible errors committed in the course of medical care should be established promptly in order to be disseminated to the medical staff of the institution concerned so as to prevent the repetition of similar errors and thereby contribute to the safety of users of all health services.[13]

Summarizing the analysis of international law, as well as the practice of the ECHR, it should be concluded that it is the duty of States to establish an effective legal mechanism to investigate each case of medical negligence, which has led to serious consequences. The purpose of such an investigation is, first and foremost, to protect the human right to life by reducing the number of cases of medical negligence. The legal liability of health professionals is a necessary part of such a mechanism, but the ECHR has indicated that such liability does not necessarily have to be only criminal, but may be civil or disciplinary. Priority in addressing these issues should not be given to the severity of legal sanctions, but to the timeliness and thoroughness of the investigation and prosecution of each case of medical negligence, in order to prevent the recurrence of such consequences in the future.

An analysis of the legislation of Germany, Latvia, Poland and Ukraine has shown that in all of these States medical

negligence, which has resulted in the death of a patient or serious harm to his or her health, is considered a crime committed through negligence. At the same time, there are two approaches to establishing criminal liability for this crime. In Germany and Poland, for example, criminal law does not provide for special rules establishing liability for medical negligence, and the general rules on negligent homicide or serious injury to health by negligence apply to such cases. Another approach takes place in Latvia and Ukraine, where the criminal codes have a special provision that provides for liability for the improper performance of duties by medical personnel. There are also significant differences in the types and limits of punishment provided for in the criminal legislation of these countries for medical negligence (Table 1).

An analysis of the data presented in Table 1 shows that in those States where medical negligence is criminalized in a separate article of the criminal law (Latvia, Ukraine), the punishment for this crime is less severe. This is due to the fact that the legislator takes into account that medical activity is associated with a high risk of harm to the patient as a result of medical mistake. At the same time, in States where the criminal law does not distinguish medical negligence as a separate article and liability for this crime is incurred according to the norms providing for liability for causing death or bodily injury through negligence (Germany, Poland), sanctions are stricter because they do not take into account the specifics of such crimes committed by medical professionals.

An analysis of the judicial practice of Ukraine in cases of medical negligence (Article 140 of The Criminal Code of Ukraine (CCU) "Improper performance of professional duty by a member of a medical or pharmaceutical profession") showed that the courts, as a rule, do not apply criminal punishment in the form of imprisonment. Physicians and other medical professionals were either sentenced to other types of punishment or were released from punishment or from serving it.

Thus, the study analyzed 75 court decisions included in the Unified State Register of Court Decisions of Ukraine for the period from 2007 to June 2019, according to which 80 medical workers were charged with medical negligence under Article 140 of the CCU, including 78 doctors and 2 nurses; 13 medical workers (16%) were found innocent and acquitted, 67 (84%) - guilty. 19 (28 %) persons have been sentenced to actual punishment, including 4 to imprisonment, 6 to restriction of liberty, 1 to correctional labor, 7 to deprivation of the right to engage in medical activities and 1 to a fine. 48 (72 %) were exempt from execution of their sentences, including 15 on probation, 16 on amnesty and 17 due to limitation period. Of the 67 persons convicted of medical negligence, only 4 (6 %) were sentenced to imprisonment for a period not exceeding 2 years and 6 months, while the remaining 63 (96 %) were sentenced to other penalties or released from serving their sentences.

Other researchers also point out that in Ukraine there is a steady tendency to impose punishments that are not related to imprisonment or release from serving a sentence for medical negligence. So, Valentyn Franchuk, Svitlana Trach Rosolovska, Petro Selskyy et al in the article *Analysis of Final Judgements in Cases of Medical Negligence Occurred in Ukraine* indicate that imprisonment for these crimes for a period of 1 to 2 years was assigned only in 5,9% [18]. The same tendency is confirmed by Alesia Gornostay, Alona Ivantsova and Tetiana Mykhailichenko in the article *Medical Error and Liability for it in some Post-Soviet Countries (Belarus, Kazakhstan, Moldova, Ukraine).* In their opinion, such a loyal attitude of judges to physicians who commit medical negligence takes place not only in Ukraine, but also in post-Soviet countries such as Belarus, Kazakhstan and Moldova [19]

Thus, the judicial practice of Ukraine follows the path of imposing a medical negligence penalty in the form of imprisonment only in extreme, exceptional cases, mainly limiting it to milder measures of influence or even freeing such persons from serving their sentences.

Although there is a strong tendency in European countries that medical negligence is rarely punished by imprisonment, Polish criminal law is being proposed to be amended to radically change the criminal penalty for this crime. As was already mentioned, in Poland The Penal Code does not contain a separate article on liability for medical negligence resulting in serious consequences, and in such cases the rule on causing unintentional death (Art. 155) or serious injury to health (Art. 156, § 2 and 157, § 3) applies.

Given that the sanction of Article 155 of the Penal Code of Poland establishes a sentence of imprisonment of 3 months to 5 years, this allows the court to impose a milder sentence than imprisonment for medical negligence, which led to the death of the patient. Thus, Article 37a states that if the law provides for a punishment of imprisonment of no more than 8 years, a fine or restriction of liberty may be applied instead. Under Article 66 the court may conditionally discontinue the criminal proceedings, but this shall not be applied to the perpetrator of an offence for which the statutory penalty exceeds 5 years of imprisonment [15].

On June 13, 2019, The Sejm of the Republic of Poland adopted a draft law amending the Penal Code and some other laws, which provides for extensive reform of the criminal law [20]. One of the proposed changes is a significant increase in sanctions for causing unintentional death. So, according to § 1 of Art. 155 for this crime it is proposed to establish a punishment from one year to 10 years of imprisonment, and if death is caused to more than one person (§ 2 of Art. 155) - from 2 to 15 years of imprisonment. This document, which in the opinion of leading Polish scientists contains numerous technical and legal defects [21], has not yet been signed by the President of Poland and therefore has not entered into force.

Obviously, in the event of these amendments to Article 155 of the Polish Penal Code, the only possible punishment for medical negligence resulting in death of a patient will be imprisonment. The application of a milder punishment (fine or restriction of liberty) in accordance with Art. 37a, as well as probation on the basis of Art. 66 will become impossible.

These novelties in Poland are actively discussed and critically evaluated by many specialists in both medicine and law. Referring to representatives of the medical community, the changes in the Penal Code contain threats to physicians, who may be subjected to extremely severe criminal punishments for negligent offences in the performance of their professional duties, if this has led to the death of a patient. Pessimistically predicting the consequences of such innovations, Polish physicians first of all note that such actions of the state can push medical stuff to massively refuse to perform their duties in situations where there is a risk of patient's death. Accordingly, this will significantly reduce the quality and efficiency of medical care provided to the population of the country and will have a negative impact on the right to health care in Poland. Experts point to another potential problem that may also have a negative impact on Polish health care: the strengthening of labor migration processes of Polish physicians to countries where the legislation is less rigid (or more balanced) in terms of criminal liability for adverse effects of treatment [22].

It should be noted that attempts to solve complex social problems by increasing the severity of punishments for offences are quite common. However, scientific research shows that such a way is counterproductive, as it leads to the emergence of new negative social phenomena, the overcoming of which requires significant material and non-material costs. The effectiveness of criminal law influence is not increased by toughening punishments, but by increasing its inevitability. Thus, as early as 1764 the outstanding Italian lawyer and economist Cesare Bonesana di Beccaria in "An Essay on Crimes and Punishments" wrote: "The certainty of a small punishment will make a stronger impression, than the fear of one more severe, if attended with the hopes of escaping; for it is the nature of mankind to be terrified at the approach of the smallest inevitable evil, whilst hope, the best gift of Heaven, hath the power of dispelling the apprehension of a greater; especially if supported by examples of impunity, which weakness or avarice too frequently afforded." [23, p. 94, 95]. Nobel Laureate-economist Gary S. Becker in his work "Crime and Punishment: The Economic Approach" on the basis of his mathematical calculations, concludes that in counteracting crime, "optimal" decisions are interpreted to mean decisions that minimize the social loss in income from offenses. The author wrote that if there is not a high level of probability of criminal prosecution, then increasing the severity of punishments will not lead to the desired result, but at the same time significantly increase public spendings on combating crime [24, p. 207-209]. A theory of the limits of the penal sanction defends prof. Douglas Husak in his study "Overcriminalization. The limits of the Criminal Law." [25].

One of the authors of this article, Prof. N. Gutorova, justifies in her researches that the purpose of criminal law regulation is, first of all, to prevent the commission of new crimes by applying such measures of influence, which cause minimal damage to society. [26] The legislator should be guided by this when establishing sanctions for crimes, especially when it comes to crimes in the field of professional and official activity. It should be taken into account both the specifics of the perpetrators of such crimes, as well as the specifics of the crimes themselves [27].

The above suggests that the criminal punishment in the form of long-term imprisonment for medical negligence cannot objectively lead to a reduction in the number of such crimes, and, accordingly, improvement of the protection of patients life and health, but will have a negative impact on the health care system as a whole, as well as on the activities of individual physicians.

CONCLUSIONS

1. Medical negligence is a very common negative social phenomenon in the world. In order to protect the human right to life states are obliged to establish an effective legal mechanism to investigate each case of medical negligence, which has led to serious consequences. Such a mechanism should, first of all, ensure the timeliness and thoroughness of the investigation and prosecution of each case of medical negligence, in order to prevent the recurrence of such consequences in the future. Legal liability for medical negligence is a necessary part of this mechanism, but it should not be only criminal, but also civil or disciplinary.
2. The criminal laws of Germany, Latvia, Poland and Ukraine establish that medical negligence, which led to the death of a patient or causing serious harm to his or her health, entails criminal liability for a negligent crime. There are two ways to establish such liability: 1) by formulating a separate norm in the criminal law (Latvia, Ukraine); 2) by applying the rules on liability for the negligent homicide or serious injury to health by negligence (Germany, Poland). In the criminal laws of states where there is a separate rule on medical negligence, sanctions for this crime are milder.
3. An analysis of the judicial practice of Ukraine in cases of medical negligence for the period from 2007 to July 2019 showed that in most cases (96%) the sentence of imprisonment was not applied, or medical professionals were released from serving the sentence.
4. The inevitability of criminal punishment rather than its severity should be recognized as a core for the medical negligence prevention concept. That's why the long-term imprisonment for medical negligence as a form of punishment should be recognized as socially unreasonable, it cannot improve the protection of patients' life and health but leads to significant negative social complications instead.

REFERENCES

1. Makary M., Daniel M. Medical error—the third leading cause of death in the US BMJ 2016; 353. doi: https://doi.org/10.1136/bmj.i2139 (Published 03 May 2016)
2. Patient Safety: Making health care safer. Geneva: World Health Organization; 2017. Licence: CC BY-NC-SA 3.0 IGO. doi: https://apps.who.int/iris/bitstream/handle/10665/255507/WHO-HIS-SDS-2017.11-eng.pdf?sequence=1&isAllowed=y

3. Nordqvist C. Medical malpractice: What does it involve? MedicalNewsToday, 5 April 2017. doi: https://www.medicalnewstoday.com/articles/248175.php
4. Zielinski P. Kilka słów o pojeciu oraz rodzajach bledu medycznego. MW 2016;8:181-195.
5. Soergel P., Schöffski O., Hillemanns P. et al. Increasing Liability Premiums in Obstetrics – Analysis, Effects and Options. Geburtshilfe Frauenheilkd. 2015 Apr; 75(4): 367–376. doi: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4437753/
6. International Covenant on Economic, Social and Cultural Rights. Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 3 January 1976, in accordance with article 27. doi: https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx
7. Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine, Oviedo, 4.IV.1997. Council of Europe, doi: https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168007cf98
8. European Convention on Human Rights https://www.echr.coe.int/Documents/Convention_ENG.pdf
9. European Court of Human Rights. The case of Mccann and Others v. the United Kingdom. doi: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-57943%22]}
10. European Court of Human Rights. The case of Lopes De Sousa Fernandes v. Portugal. doi:https://hudoc.echr.coe.int/eng#{%22languageisocode%22:[%22ENG%22],%22appno%22:[%2256080/13%22],%22documentcollectionid2%22:[%22GRANDCHAMBER%22],%22itemid%22:[%22001-179556%22]}
11. European Court of Human Rights. The case of Calvelli and Ciglio v. Italy. doi: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-60329%22]}
12. European Court of Human Rights. The case of Vo v. France. doi: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-61887%22]}
13. European Court of Human Rights. The case of Byrzykowski v. Poland, doi: https://hudoc.echr.coe.int/eng#{%22fulltext%22:[%22\%22CASE%20OF%20BYRZYKOWSKI%20v.%20POLAND\%22%22],%22documentcollectionid2%22:[%22GRANDCHAMBER%22,%22CHAMBER%22],%22itemid%22:[%22001-76066%22]}
14. The Criminal Code of Germany. doi: https://www.gesetze-im-internet.de/englisch_stgb/index.html
15. Ustawa z dnia 6 czerwca 1997 r. Kodeks karny, http://prawo.sejm.gov.pl/isap.nsf/download.xsp/WDU19970880553/U/D19970553Lj.pdf
16. The Criminal Law of The Republic of Latvia. doi: https://likumi.lv/ta/en/id/88966-the-criminal-law
17. The Criminal Code of Ukraine. doi: https://zakon.rada.gov.ua/laws/show/2341-14
18. Franchuk V. V., Trach-Rosolovska S. V., Selskyy P. R. et al. Analysis of Final Judgments in Cases of Medical Negligence Occurred in Ukraine. Wiad Lek, 2018;3. doi: http://wl.medlist.org/03b-2018-28/
19. Gornostay A., Ivantsova A., Mykhailichenko T. Medical Error and Liability for it in some Post-Soviet Countries (Belarus, Kazakhstan, Moldova, Ukraine). Wiad Lek, 2019;5:877-882
20. Ustawa z dnia 13 czerwca 2019 r. o zmianie ustawy – Kodeks karny oraz niektórych innych ustaw, doi: http://orka.sejm.gov.pl/proc8.nsf/ustawy/3451_u.htm#_ftn1
21. Opinia dotycząca uchwalonej przez Sejm w dniu 13 czerwca 2019 r. ustawy o zmianie ustawy Kodeks karny i niektórych innych ustaw, przedstawionej Prezydentowi Rzeczpospolitej Polskiej w trybie art. 122 ust. 1 Konstytucji RP. 23 czerwca 2019 r., doi: https://www.rpo.gov.pl/sites/default/files/Opinia%20%20o%20nowelizacji%20Kk%20158%20prawnik%C3%B3w%20ze%20%20wszystkich%20%20o%C5%9Brodk%C3%B3w%20naukowych%2C%2023%20czerwca%202019.pdf
22. Lekarze rezydenci: politycy lekką ręką zagłosowali za zaostrzeniem Kodeksu karnego. . . Autor: KG/Rynek Zdrowia 15 czerwca 2019, doi: http://www.rynekzdrowia.pl/Prawo/Lekarze-rezydenci-politycy-lekka-reka-zaglosowali-za-zaostrzeniem-Kodeksu-karnego,195631,2.html;
23. Beccaria C. An Essay on Crimes and Punishments. By the Marquis Beccaria of Milan. With a Commentary by M. de Voltaire. A New Edition Corrected. - Albany: W.C. Little & Co., 1872, doi: http://oll.libertyfund.org/titles/2193 (accessed on 04.05.2018).
24. Becker G.S. Crime and Punishment: An Economic Approach. Journal of Political Economy, 1968: 76 (2): 169–217.
25. Husak D. Overcriminalization: The Limits of the Criminal Law. - Husak D. Overcriminalization: The Limits of the Criminal Law / D. Husak. – Oxford: Oxford University Press, 2008, doi: https://cryptome.org/2013/01/aaron-swartz/019532871X.pdf
26. Gutorova N.O. Sotsialna funktsiia kryminalnoho prava: problemy optymizatsii zasobiv yii realizatsii (Gutorova N.O. Social Function of Criminal Law: Issues of Optimization of Means of its Realization), Pravo Ukrainy, 2017; 2: 84-92
27. Gutorova, N. White-Collar Crime: Ukrainian Experience of Searching for Optimal Model of Criminal Liability. Socrates. RSU elektroniskais juridisko zinātnisko rakstu žurnāls. 2018;2 (11):100-116

Authors' contributions:
According to the order of the Authorship

Conflict of interest:
The Authors declare no conflict of interest

ORCID
Nataliya Gutorova – 0000-0003-2485-0651
Oleksandr Zhytnyi – 0000-0003-0795-626X
Tetyana Kahanovska – 0000-0002-4427-2038

CORRESPONDING AUTHOR

Nataliya Gutorova
Poltava Law Institute of Yaroslav Mudry National Law University
5 Pershotravnevy ave., 36011, Poltava, Ukraine
e-mail: natalygutorova@gmail.com

Received: 10.07.2019
Accepted: 04.10.2019