

Causal Complex of Medical Crimes in the Republic of Tajikistan

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Abstract: The article considers the causal complex of crimes, committed in the field of medical service. Currently, the relevance of the issue of the responsibility of a health worker in the implementation of their professional activity is increasing. This is due to the growth in number of claims and cases against them. In the existing public health system, those defects that are detected during inspections are considered not as a system weakness in the delivery of health care, but, unfortunately, as only a personal failure of any health worker or a medical product, therefore, the usual method is still used to eliminate them - blame and punishment of this health worker. Patient safety should be a key indicator of the quality of the entire public health system. In Tajikistan, these issues require attention from sociologists, political scientists, criminologists, lawyers, as well as physicians themselves. The modern legislation of the Republic of Tajikistan on health service requires careful analysis and adjustment, to introduce changes, additions and the adoption of new regulations in the public health system of the republic. The purpose of the work is to consider social relations, developing in the field of public health service. An object. The object is the determinants (reasons and conditions), that have served to commit offenses in the field of public health service. The subject is the legal framework in the field of medical service. The author in his work relies on the fundamental provisions of criminal law, criminology, medical law, medicine and pharmacy. The work is based on a comprehensive approach, all branches of the health service sector are studied. The methodological basis consists of a systemic, comparative legal, formal legal, logical and analytical method. Conclusions. Results. The author comes to the conclusion, that most of the crimes committed in the field of public health service are committed, firstly, due to the lack of professionalism, competence of health workers, and secondly, this is a reflection of low legal culture and the spread of nihilism. The author concludes that a) it is necessary to systematize the legal regulations, controlling public relations in the field of public health service, b) to carry out research and practice activities in medical institutions and other relevant medical organizations as much as possible in order to improve the qualifications of health workers.

1 INTRODUCTION

The sphere of medical services for the population is understood as: "**The field of public health service (PHS)** is a part of public service sector (PSS), its subsystem, the functional purpose of which is to provide the population with consumer (medical) services through direct medical service" (Rustemov, p. 68, 2003). We fully support this definition.


Everyone has the right to a standard of living, sufficient for health and medical service (Edward, 2009).

The subject "Law and Health" is widely taught (in schools of law, medicine, public health service and

public health administration), practiced by "health legislators" and analyzed by experts in various fields of health service law, bioethics and health service policy (Gostin, 2008).

The overall low detection of corruption-related crimes is explained by the poor professional training of employees of the Ministry of Internal Affairs. Representatives of law enforcement agencies (investigator, procurator, judge, etc.) should be professionals, highly qualified personnel.

Crimes in the health service sector are generally quite specific and have a number of features. Health service is a strategic field of activity of the state and, accordingly, the state should create conditions for its development.

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Moving to the determinants of medical crimes in Tajikistan, we note, that there are both common reasons and special ones in the field of public health service.

As the notable criminologist of the CIS and Europe, Professor D.A. Shestakov, "the criminal manifestations of medical treatment should also include:

1) widespread, but so far not specifically criminalized, the imposition of unnecessary therapeutic actions: surgical interventions, various medical procedures, etc.;

2) treatment, certainly ensuring the resumption of the disease after remission with the expectation, that the doctor will receive additional income from repeated treatment, etc.". In addition, the rudeness of the new medicine has something similar to the behavior of the former Soviet sellers. Now the doctors pass all bounds, feeling their "power", people depend on them. In addition, they have not rightfully deserved money (Shestakov, 2016).

2 METHODS

The studied issue of criminal law, criminological is complex, interdisciplinary, in its development we relied on the fundamental provisions of criminal law, criminology, medical law, medicine and pharmacy.

In the course of work, general scientific and special methods were also used: statistical, systemic, comparative research, as well as specific sociological methods: document analysis, observation.

The reliability and validity of the conclusions, made in the research, are ensured by: the use of a significant number of legislative, monographic, periodical, Internet sources of legal, sociological, psychological and criminological nature, prevention programs and the State program "Salamatty Kazakhstan".

3 RESULTS

It should be noted, that on average in Republic of Tajikistan, every 1/3% of the offender committed a crime while being in a state of alcoholic intoxication, every 8.2% - in a group. Most of all identified persons, who committed crimes, were unemployed 82.1%. Every 4th murder, every 29th infliction of grievous bodily harm are committed in a state of alcoholic or drug intoxication (Statistical data of the MIAC of Ministry of Internal Affairs, 2020).

In the existing public health system, those defects, that are detected during inspections, are considered not as a system weakness in the delivery of health care, but as, unfortunately, only a *personal failure* of any health worker or a medical product, therefore, the usual method is still used to eliminate them - blame and punishment of this health worker. The state is carrying out various reforms in health service, trying to adopt the rich experience of other developed countries. Patient safety should be a key indicator of the quality of the entire public health system. Today, medical care has moved into the category of medical services, which means, that the doctor has become a service provider.

The practice of the so-called "paid (commercial) medicine" led, in particular, to the formation of a rather peculiar moral and psychological "doctor - patient" relations, while patients formally did not have the right and opportunity to materially influence the quality of medical service.

Illegal ways of encouraging the work of health workers began to spread, which ultimately led to the moral decay of a separate part of the medical staff. This can be avoided by introducing a flexible system of remuneration of health workers, depending on their qualification and the volume of medical service. Low material interest of health workers leads to a decrease in the level of medical service, and as a result, a lag in the introduction of new medical technologies. Many of the skilled health workers quit medicine entirely or moved abroad.

The growth of poorly protected population segments (single pensioners, disabled people, persons without a permanent place of residence, refugees, internally displaced persons, other visitors, who have temporarily lost social bonds, etc.) leads to the fact, that their disappearance remains completely unnoticed, or is detected too late for effective search measures to be taken. The murder of such a person with the subsequent hiding of the corpse allows the criminal to shirk responsibility for a long time.

Very capacious and the most complete articulation of the situation in modern health service! Most of the crimes committed by health workers have remained in high latency, because the victims did not file a report with the law enforcement agencies. They themselves were the "instigators" of such crimes as illegal abortion, HIV infection, illegal medical treatment. In addition, the still low legal culture of the population and legal nihilism contribute to the commission of most crimes in the field of the Ministry of Education and Science.

Preventing crimes from registration by law enforcement agencies was widespread in the former

USSR. This phenomenon did not sidestep our country either. However, doctors, in the process of anonymous interviews, showed, that now the victims - patients or their relatives - report to law enforcement agencies as a result of, from their point of view, insufficient explanations about the reasons for death, serious consequences of illness, injuries, etc. Claims for repair of material damage are increasing from year to year.

As it was rightly noted, the concept of “crime fighting” should have an appropriate meaning and take it correctly, since it is impossible to immediately and completely abandon this term, which is confirmed in a number of legislative acts (Boskholov, p. 39, 2005).

Low wages, frequent late payment of it, poor quality and inadequate provision of hospitals with medicines, inventory, instruments and modern medical multidiscipline equipment can push doctors, especially beginners, to commit acquisitive crimes. This explains the increased staff turnover, in addition to staff reductions (annually, quarterly). So, for example, the monthly average nominal accrued wages of employees by type of economic activity as of November 2019 in health service and social services amounted to 910.09 somoni, or 80 USD, and increased compared to the same period in 2018 by only 3%. Wage arrears decreased by 0.7%, but in the service sector it increased by 5.9% (Socio-economic situation of the Republic of Tajikistan, p. 9, 2019). As a result, skilled personnel quit or emigrate, creating and exacerbating a serious problem of shortage of human resources and further undermining the country's public health system.

4 DISCUSSION

In recent years, we have seen the number of wrongful acts among health workers. Among them are such crimes as causing various harm to health, theft, violation of the established rules for dealing with drugs, psychotropic, poisonous substances, negligent homicide, misuse of budgetary funds, allocated for medical needs, forgeries and appropriation of drugs, prescribed for fictitious patients, fraud and etc..

In addition, the reasons for crimes in the field of public health service are the lack of legal support when establishing appropriate prohibitions or permits, the low legal culture of the health workers themselves. The country *does not publish* or replicate the Laws and Codes of the Republic of Tajikistan for a wide range of readers by typographic method. Health workers - officials get to know them on the

Internet, there are no stitched texts. Ordinary medical and pharmaceutical workers have no time to watch the Internet, they are busy with medical activities, prevention of diseases after treatment, etc.

Private traders could publish them and successfully sell them. The population, like the doctors themselves, are often in the dark of changes and amendments to the legislation as a whole. In general, the medical factor complex of crime in the country continues to be **a crisis of the physical and mental health of the population**: it is the lack of quality medical service for the majority of the population; availability of life-threatening medicines; as well as such social phenomena as drug addiction, prostitution, vagrancy, begging, less often alcoholism and parasitism.

It is necessary to highlight *the conditions conducive to the commission of crimes in the field of public health service*. These, first of all, include those mistakes, that were made during carrying out reforms in the health service sector. The transition from health insurance to the current system of “family doctors” did not produce positive results, large funds were invested, and insurance payments were not used for their intended purpose. This is still observed. Incorrect privatization of medical institutions, which takes place almost everywhere, did not produce the expected results. This is still facilitated by the imperfection of the tax system. The *conditions, contributing to the commission of crimes*, are understood as facts of reality, that do not directly cause the crime itself, but their presence in many cases contributes to the emergence of a person's intention to commit a crime. These facts relate to various specific manifestations of crime and are rooted in various fields of social relations. Conditions are much easier to identify, than to identify and uncover the reasons for criminality and crime.

One of the conditions, contributing to the commission of medical crimes in the Republic of Tajikistan, is widespread HIV / AIDS. The most subject to this are women aged 30-39 years and men of the same age. As the doctors themselves note, “despite the relatively low corresponding indicator of HIV / AIDS in the republic, it constitutes a medical and social danger. The number of HIV transmissions from HIV-infected mother to child is increasing, which indicates the HIV / AIDS epidemic in Tajikistan” (Rafiev, Azizov, Rafieva, Abdullaev, 2018).

"Radio Ozodi" noted, that “World AIDS Day is celebrated this year at a time, when the world is faced with another, no less severe virus. The number of people, diagnosed with HIV / AIDS, in Tajikistan is

12876 people, for 9 months of this year, 890 people were registered with a positive result for HIV infection. In 2019, 67 people died from this disease in the Republic of Tajikistan, which is 10 cases more than last year.

According to the updated data of the Ministry of Health of Tajikistan, during the pandemic, 22 patients with HIV / AIDS were infected with coronavirus, one of them died. As of November 30, 2020, the total number of people, infected with coronavirus in Tajikistan, reached 12194 people, 86 people died since the beginning of the pandemic. The head of the Joint United Nations Program on HIV / AIDS (UNAIDS) Vinnie Byanyima believes, that the lack of investment and measures to combat HIV and other pandemics made the world vulnerable to Covid-19. "Covid-19 showed, that investing in health not only saves lives, but also creates the basis for a strong economy. HIV health service programs should be fully funded in both economic boom and crisis times". Ms Byanyima also noted that the world needs to learn on mistakes of the HIV response, when millions of people in developing countries died while waiting for treatment. Unfortunately, at the end of 2019, there were 38 million people living with HIV in the world. In total, more than 33 million people have become victims of HIV in the world. In Tajikistan, from 1991 to October 1, 2020, 12,876 patients were registered, men - 8228, women - 4648, children under 18 years old - 1070. Most of the infected are in Dushanbe, the districts of republican subordination and the Sughd region (World AIDS Day: in Tajikistan, a HIV patient died of coronavirus, 2020).

However, so far, unfortunately, there has been no tightening to ensure patient safety. Safety issues are either not considered at all, or are resolved at the lowest level. "The main threats, posing a danger to medical inpatient institutions and affecting the safety of medical care:

a) appropriation of medicines, equipment and other property, as well as personal belongings of patients and staff;

b) illegal entry of interlopers into the wards and rooms of medical institutions;

c) technogenic accidents (fires and other emergencies and damage to engineering electrical, heating, sewerage, water supply, ventilation networks);

d) violation of the safety and functioning procedures;

e) antisocial actions and actions of personnel, visitors, patients and their caretakers in the rooms and in the adjacent territory;

f) disclosure of personal data by medical personnel and violation of medical secrecy" (Krasilnikov, Aidarov, 2017).

The crisis associated with the Covid-19 pandemic identified shortcomings in the public health system around the world, including the unreadiness of medical institutions and specialists for such situations. However, in some countries, public health system shortcomings are part of deeper and more chronic problems. This is the case in our republic, where there is also a shortage of medical institutions for serving the population of 9.5 million people, while a fairly large number of existing medical institutions are in an inadequate condition. In addition, the country saw a significant decline in the number and quality of health workers. Harsh working conditions and very low wages for doctors and nurses discourage young people from working in this field, extensively propel corruption and encourage doctors to emigrate to other countries.

A shortage of medical personnel, especially in rural areas, is also a reason for medical crime. Who treats us, how does he treat us? In Tajikistan, low wages contribute to an outflow of personnel, do not stimulate them to improve their professional level, legal nihilism and a low legal culture are inherent in both doctors and patients.

It should also be noted that doctors claim, that a dreary unhealthy diet leads to problems of overweight and obesity, cardiovascular diseases, arterial hypertension, diabetes mellitus. In turn, the population of the republic is concerned about the import of substandard and synthetic food products. In addition, prohibited or harmful fertilizers are widely used. The high cost of fresh fruit and membership in fitness studios hit pockets a lot.

However, after several years, this problem became an object for the study by legal theorists and medical workers N.A. Zykov, M.S. Rivenson, V.I. Akopov, Yu.D. Sergeev, I. F. Ogarkov, T. A. Pashinyan, A.G. Blinov, V.A. Glushkov, Yu.S. Zalmunin, O.S. Kapinus, G.R. Rustemova et al (Popova, 2016).

5 CONCLUSIONS

It is necessary to agree with the opinion, that "the absence of statistically recorded iatrogenic crime leads to a high level of its latency, the passivity of organizing preliminary investigations in cases of this category, impunity for criminals and, as a consequence, to an increase in the number of crimes,

committed in the field of professional medical activity” (Ognerubov, 2014).

It is necessary to distinguish between crimes committed by a health worker and a medical error. A medical error is a innocent mistake of a doctor, in which there is no elements of the crime and which arises from the imperfection of medicine. It is necessary to develop medical ecology - a section of medical deontology, the theory of professional mistakes. Iatrogenic diseases should be considered a special type of medical errors. Moreover, diagnostic iatrogeny occurs in 20% of cases, while therapeutic iatrogeny occurs in 56%. In the literature, the following fields or stages of iatrogeny are distinguished: diagnostic, treatment-and-prophylactic, tactical-strategic, informational, organizational iatrogenic fields. In general, all acts (actions or inactions), that caused improper treatment, are divided into errors, accidents, iatrogenies, as well as intentional professional crimes and careless actions (Nesterov, 2019).

The field of pharmacy should be noted separately. Provision of the population with the necessary medicines is directly related to the problem of their quality and safety for human health. The world is on the rise of the pharmaceutical industry. Protection of the population from dangerous, substandard, adulterated medical products should be reliable, especially the fight against adulteration of medicines of frequent and daily consumption should be escalated.

The Criminal Code of the Republic of Tatarstan has one article 210-1, while in the Criminal Code of the Russian Federation, for example, there are 3 new articles, that establish responsibility for the right and circulation of adulterated medicines and dietary food supplements". But the Criminal Code of the Russian Federation does not establish responsibility for pharmaceutical piracy. In addition, trade through online pharmacies is fraught with violations of storage, transportation, and dispensing of medicines. The Internet trade of medicines is not legally confirmed in our country in Tajikistan either. Our republic is still lagging behind in terms of the development of the pharmaceutical market. Russia, for example, ranks 7th among the world's leading pharmaceutical markets. At the present stage of development, the pharmaceutical market is a complex, multi-level, multifunctional institution with consistently high rates of growth of production, sale of goods and, accordingly, indicators of profitability. “The pharmaceutical market is a field of interaction between subjects, directly related to the law, sale and consumption of medicines and medical products;

engaged in the searching, research, development of methods for the production activity, processing, manufacture and storage of medicines, drugs and materials, used in medicine and veterinary medicine, as well as solving issues of their standardization, purchasing and selling medicines in order to meet the needs of end consumers and obtain economic benefits" (Ilikbaeva, 2018).

Therefore, the widespread and public danger of such acts served as determinants of the criminalization of pharmaceutical crimes.

Health service experts from three countries - Russia, Kazakhstan and Uzbekistan - conducted a deep scientific research on the confrontation between patients and doctors and taking the heat out of. The reasons for the conflict situation are divided into two groups - explicit and implicit. Patient dissatisfaction is associated with inappropriate communication of doctors, associated with partnerships between patients and health workers. The second reason is the nonavailability of modern, high-tech medical care.

One should always take into account “the nature of the neuropsychic overload of a particular doctor or doctors” (Tyagunov, Samoilichenko, 2007). Medical trade unions exist only on paper, they have not exercised public control over the observance of labor legislation for a long time.

We cannot side-step an issue of the state of the sanitary and epidemiological service in many countries, including the Republic of Tajikistan. The COVID-19 coronavirus pandemic identified many of the problems, accumulated in society over the post-war years, including in health service. Unfortunately, this direction of medicine has fallen into complete decay. But sanitation and hygiene are the fields, that are directly responsible for national safety. In medical universities, the faculties "Sanitary and Hygienic" are closed, instead they train general practitioners (GPs), they do not train forensic doctors. Over time, there will be no one to replace the older generation, even the middle one. The existing morgues do not meet sanitary requirements, they are in critical condition, new buildings, equipped with new equipment and preparations, are required, waste must be disinfected and disposed of, and not drained into the general sewer system. Forensic medical examiners should receive wage supplements, as they directly work with coronavirus.

When considering various kinds of medical interventions in the human body, the medical risk should always be minimal, "that is, this should mean the main thing: the danger and severity of medical intervention should not exceed the danger and severity of the disease or injury itself, for which they

are performed" (Savoshchikova, Voronina, Sabrin, 2018).

During the pandemic, "the existing social contradictions have become aggravated, exposed shortcomings in managerial activity, and influenced the state of crime" (Ovchinsky). The number of crimes related to encroachment on the property of citizens has increased: robberies, attacks on grocery stores.

Violations of isolation during quarantine, as practice has shown, are associated with selfish ideas about own rights, with a carefree attitude towards the risk of being infected and infecting others, with misinterpreted interests of own professional duty, with an ignorant idea of possible negative consequences, etc. (Kazakova, 2020).

A hasty change in legislation cannot be considered successful, since it not only represents a derogation from the principle of systemic lawmaking, but also contains direct contradictions to the current criminal legislation. For example, a comparative analysis of the newly introduced Art. 207.1 and 207.2 of the Criminal Code of the Russian Federation revealed a number of illogical and random decisions. This also applies to the updated version of Art. 236, additions to Art. 238.1 of the Criminal Code of the Russian Federation.

The few doctors, who have followed proceeding in court are only a small part of the picture (Sebastian Peruz).

American forensic medicine is less than a hundred years old as an organized field. Overall, this relatively young field has almost certainly had a positive impact on the precise definition of de facto guilt and de facto innocence in the criminal justice system (Risinger, D. Michael, 2010).

The emergence of new articles in the Criminal Code of the Russian Federation is associated with such a negative phenomenon of public life during the coronavirus period as "infodemia", defined as "the production of fictional "conspiracy theories" about the origin of the virus, the dissemination of information about fake treatment methods, the spread of cases with the level of the disease, unreliable information on methods of prevention, giving an extreme emotional coloring to existing reliable information" (Ishchenko, 2012).

Human rights include formulation of the need for fair, dignified and humane treatment of people, regardless of their ethnicity, religion or race (Ekpa, 2016). The medical field is one of the social institutions that should be implemented humanely.

Medical activity is based not only on the principles of medical ethics, but also apply the

principles of the United Nations. International humanitarian law is another important source of professional regulations, by which doctors can calibrate legislation or other obligations to the state (Faunce, 2008).

In general, summarizing, it would be nice to note, that this is the first attempt to study the determinants of medical crime in the Republic of Tajikistan. Thus, the general and specific reasons for the commission of crimes by health and pharmaceutical workers should be considered from both objective and subjective factors. Medical and pharmaceutical activity should be transparent, available and open. The transition to digitalization of health service will address these problems to some extent. It is necessary to separately post an electronic database of all medical errors on the website of the Ministry of Health and Social Protection of the Population of the Republic of Tatarstan, which will help health workers quickly and efficiently make the right decisions on the patient's illness (injury).

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