

ppi 201502ZU4645

Esta publicación científica en formato digital es continuidad de la revista impresa

ISSN-Versión Impresa 0798-1406 / ISSN-Versión on line 2542-3185 Depósito legal pp

197402ZU34



CUESTIONES POLÍTICAS

Instituto de Estudios Políticos y Derecho Público "Dr. Humberto J. La Roche"
de la Facultad de Ciencias Jurídicas y Políticas de la Universidad del Zulia
Maracaibo, Venezuela



Vol.39

Nº 70

2021

Protection of Human Health: Medical and Legal Aspects

DOI: <https://doi.org/10.46398/cuestpol.3970.24>

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Abstract

The purpose of study is to develop scientifically based recommendations for introducing amendments and additions to existing legislation, as well as the development of new regulatory legal acts and measures, aimed at systematic counteraction to criminal offences against human health. In paper have been used a systematically structural method (to investigate the concept of harm to human health). Using the statistical method by degree of coverage of units a one-time statistical questionnaire (statistical observation of a certain part of the units of the statistical population based on the principles of voluntariness of responses and the possibility of incomplete return from respondents of filled statistical forms) was held. The results of the study the following points are proposed: to consider the protection of human life and body at the international level to be interconnected associated categories forming an organic unity, which require equivalent protection; to modify an existing criminal legislation in terms of criminal offences against health of a person; to offer a range of proposals to detail signs of bodily injury and take them into account during the developing of new Rules of forensic medical determining the severity of bodily harm.

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Keywords: damage to human health; medical malpractice; emasculations; suffering; crimes against health.

Protección de la salud humana: aspectos médicos y jurídicos

Resumen

El objetivo del estudio es elaborar recomendaciones con base científica para introducir enmiendas y adiciones a la legislación vigente, así como el desarrollo de nuevos actos jurídicos reglamentarios y medidas, destinados a contrarrestar sistemáticamente los delitos contra la salud humana. Se ha utilizado un método sistemáticamente estructural (para investigar el concepto de daño a la salud humana). también se utilizó el método estadístico por grado de cobertura de las unidades y se realizó un cuestionario estadístico único (observación estadística de una cierta parte de las unidades de la población estadística sobre la base de los principios de voluntariedad de las respuestas y la posibilidad de retorno incompleto de los encuestados de los formularios estadísticos cumplimentados). En los resultados del estudio se proponen los siguientes puntos: considerar la protección de la vida y el cuerpo humanos a nivel internacional como categorías interconectadas que forman una unidad orgánica, que requiere una protección equivalente; modificar la legislación penal existente en términos de delitos contra la salud de una persona; ofrecer una serie de propuestas para detallar los signos de lesiones corporales y tenerlos en cuenta durante el desarrollo de nuevos Reglas de medicina forense que determinan la gravedad de los daños corporales.

Palabras clave: daños a la salud humana; mala praxis médica; emasculaciones; sufrimiento; delitos contra la salud.

Introduction

There is several criminal offenses against health in a report of General Prosecutor's Office of Ukraine (2021). It states that there were 36253 offences in 2016; 29518 – in 2017; 29359 – in 2018; 29678 – in 2019; 27292 – in 2020. According to the summarized statistical information, it is possible to draw a conclusion that such criminal offences are not a singular phenomenon in Ukraine. Humanity is faced with brutality and physical violence every day. This leads to various negative consequences (open and closed fractures of the *bones of the fornix* or the base of the skull, brain contusions of severe degree, both with or without compression of

brain, closed injuries of the spinal cord in the cervical spine, abdominal injuries that have penetrated the abdomen, etc.). Every country is actively engaged in combating offences against health and convert into a fact various programs and measures aimed at counteracting this negative phenomenon. The research of criminal offences against human health has been carried out since 1991 in Ukraine. However, they were all based on the provisions of the CC of Ukraine 1960. Scientific developments in this sphere have intensified with the adoption of the Code 2001, considering changes in legislation. Nevertheless, the studies in the field of health care from criminal encroachments were not comprehensive and did not fully reveal all signs of bodily harm.

For the first time in the theory of domestic criminal law 2010 Mitrofanov and Linov investigated "Injuries (criminal and medical aspects)" (2010). The authors proposed to change the terminology of bodily harm and examined the types and signs of bodily injuries in criminal and medical terms, which are positive aspects of work. However, there are some inaccuracies in the work, regarding the medical aspects of injuries and the classification of criminal offences against human health.

Nakonechnaya carried out a thorough research "Violence as a cross-cutting criminal concept" in 2016. In his work, the author clarifies the content of the concept of violence (2016: 163). According to this definition, we cannot agree that the violence is intentional because, as the author further states, the expressions of violence include drubbing, beatings, torture, torment, ill-treatment, bodily injury, murder, which may also be imprudent. The consequences, listed by the author – physical (to a person or vertebrate animal) and (or) mental harm (to a person) can be caused not only by physical pressure, but also by mental pressure.

A dissertational work by Lakhova "Criminal Liability for Intentional Trivial Bodily Injury, Beating, Torture" (2017) contains provisions insufficiently reasoned by the author. The author's proposal concerning the advisability of drawing up a list of such injuries and conditions, which is generally accessible to persons with no special medical education, is controversial. "This can be arranged by classifying the types of specified injuries and condition groups" (Lakhova, 2017). However, it is impossible to attach in the directory for law enforcement practitioners, solving criminal offenses related to causing bodily injuries and performing criminal investigations about these criminal offenses, all the issues. Even if we consider that this "directory" should be used by the person carrying out primary qualification, then all the questions related to determining the severity of bodily injuries are transferred to the employee, but not a person with specialized knowledge in this area - forensic pathologist. Also, the proposed author's definition of bodily harm is not sufficiently developed. Firstly, taking the circumstances which exclude criminal wrongfulness of

an act into account, bodily injury is not always unlawful. Secondly, not all injuries have health harming consequences. In addition, this interpretation cannot be found in the Rules on forensic determination of the degree of bodily injury (hereinafter referred to as Rules) (MHU, 1995), because it contains terminology that is purely legal and not within the scope of knowledge of forensic experts: "unlawful", "must", "socially dangerous consequences".

The purpose of the article is to develop scientifically based recommendations for amendments and additions to existing legislation and to develop new legal and regulatory instruments and measures to systematically counteract criminal offences against human health.

The assignment: to analyze human health regulations; to identify deficiencies and gaps in legislation which need to be addressed; to propose possible solutions to problems in the field of normative protection of human health.

The *object* of the study protection of human health; the *subject* of the study medical and legal protection of human health.

1. Methods and Materials

The methods of research constitute a certain system, considering the goals and objectives of the object and the subject of the research. Therefore, we used the same methods in the pursuance research in the field of human health: 1) a comparative-legal method gave an opportunity to evaluate the legislation on criminal responsibility for the protection of human health in international documents and to compare these norms of the national legislation of Ukraine; 2) a systematically structural method was used to study the duration of harm to a person's health, taking into account the interdisciplinary links of the science of criminal law with related sciences - forensic medicine; 3) a dialectic method – to define the essence and content of certain concepts and categories as well as to study other problems in their development and interconnection. The use of this method has made it possible to establish a range of issues requiring legislative action; 4) a dogmatic method of analyzing existing legislation and its application in order to identify the obvious aspects of legal phenomena through penetration into the internal essential aspects and connections; 5) a statistical method, namely a statistical questionnaire survey was also used in the study to collect data from the questionnaires of 272 general forensic experts from different regions of Ukraine with the exception of Autonomous Republic of Crimea, Donetsk and Luhansk Regions from January 2019 to May 2020.

The results of the questionnaire have been used to draw conclusions and develop practical proposals. The results of the study were synthesized and systematized by induction method. Conclusions and practically significant positions were produced by using the interpretation method. The analysis of the methods by which the study was conducted indicates the importance of scientific achievements in this area.

2. Results and Discussion

2.1. Human Life and Health as the Object of Protection

International instruments governed by international law are mandatory for the states that have ratified them. Among the instruments designed to protect person's and citizen's rights, freedoms and obligations, the following documents should be emphasized: the Universal Declaration of Human Rights (UN, 1948); the Convention of the Protection of Human Rights and Fundamental Freedoms (CE, 1950); the International Covenant on Civil and Political Rights (UN, 1966a); the International Covenant on Economic, Social and Cultural Rights (UN, 1966b) and many others. The analysis of these documents demonstrates that all of them enshrine and protect a number of traditional guarantees of person's and citizen's rights and freedoms which allow everyone to choose the type of their behavior, enjoy economic and sociopolitical freedoms and social benefits both in the personal and public interest.

One of the fundamental rights is the right to life, which is a naturally inviolable human right. Every international instrument includes provisions to protect the benefit. However, during the analyzing of the content of these documents, we have noticed that they do not fully ensure the realization of the human right to health. Being a fundamental, inherent, and absolute right, the human right to health, from our point of view, should be placed alongside the human right to life. These two categories of "life" and "health" are naturally interconnected as they are priority common and universally recognized values from an international law perspective. The main reason for this is that these time frames are interdependent, mutually supported and cannot exist in isolation from each other.

Thus, one of the fundamental legal guarantees of human and civil rights is the right to health. Therefore, the proclamation, at the international level, of fundamental human rights –to life and health as a single and indivisible concept - should be the common heritage of the whole human race.

2.2. Harm to Human Health: Issues of Concern

The term “harm to health” is one of the most contradictory definitions, which belongs not only to criminal law, but also to other sciences - forensic medicine, labor law, civil law and others. The identification of its types is equally problematic. We have not found a consensus among most scientists during the researching of this issue. The definition of “harm to health”, which is used by the legislator, is ambiguous in its understanding. Harm to health is characterized by qualitative (nature) and quantitative (degree) indexes. The nature is determined by the form of pathology caused to the human body (bodily injury, disease). Scientists besides the term “harm”, use the term “disorder” and note that this is a change in human health caused by injury, disease, or pathological condition. It objectively appears to be a sign of: “Impaired functioning of an organism in comparison with those, which occurred before the commission of a wrongful act” (Sharapov and Konovalov, 2007: 127). In addition: “It may manifest itself as deteriorating health status, lowering it to a lower quality level” (Vermel and Gritsaenko, 1997: 43).

The term “bodily harm” is a purely legal definition. It does apply in medicine. In such a case, the forensic expert would be beyond the scope of the assigned duties. Moreover, the classification of injuries in medical practice is based on a specific injury morphology. For example, the disturbance of the surface layers of epidermis is called abrasion or scratch depending on the shape and area. In this case, such effects, that is, superficial injury to the epidermal layer is usually not accompanied by harm to health unless other external or internal environmental factors are added. “Harm to health” is a more overarching term than “bodily injury”. Injuries may occur posthumously, but in such a case they do not harm human health. The reason for this is the fact that the existing legislation protects only the health of a living person. Mental illness can also not be a sign of bodily harm, because it manifests itself in decreasing mental capacity of a person. That is why it is appropriate to define this sign as one of the indicators of bodily harm.

In case of injury to a person's health, criminal liability is provided for under the article of the PC of Ukraine. But there may be cases when a person consents to harm to her health, according to certain circumstances. For example, there are sports competitions which may be harmful to human health. It is essential for such sport events to be permitted by competent authorities. Besides, the injury caused to the participants must not be the result of intentional violation of established rules.

Rastoropov suggests that “the infliction of harm to a person's health with his or her consent is preceded by the totality of the obligatory conditions for its occurrence. These circumstances include: 1) legal capacity of a person

(sanity and reaching a certain age); 2) free consent (free expression of the person's will, consent to harm to one's own health); 3) right to consent (a person has the right to consent to harm his health); 4) timeliness of the consent (the consent is given before or during the act causing injury to health); 5) definiteness of the consent (consent must be specified in relation to the type of harm and the circumstances in which it is given and in which the harm is caused); 6) purpose of harm (socially useful, neutral, antisocial)" (2003a; 2003b).

2.3. Bodily Injuries as a Component Part of Health Damage

The objective features of bodily harm constitute offences that criminalize bodily harm. The consequence of any bodily injury is also the damage caused by the guilty activities of the subject to human health. Scholars note that "by using the term "bodily injury" the Penal Code emphasize combating visible and prevalent types of harm to health of traumatic origin and ignoring the possibility of violent harm against the background of latent pathology" (Sharapov and Konovalov, 2007). The term "bodily harm" is a criminal legal definition. There is no such concept in medicine. It is advisable to replace the concept of "bodily harm" with the broader concept of "harm to health".

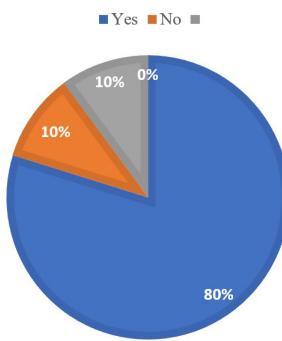
Bodily injury refers to physical harm and the results of that harm. The term is used in many types of business insurance to clarify what is covered by a policy (Bonner, 2020).

The ISO CGL states that bodily injury means bodily injury, sickness, or disease sustained by a person, including death resulting from any of these at any time. The current PC of Ukraine still does not contain a clear definition of the concept of "bodily harm" which has a negative impact on the practice of applying rules that provide for liability for bodily harm of various degrees of severity (Tatsiy *et al.*, 2017: 159). There is therefore a debate among scholars on the definition of this concept in the theory of criminal law.

An analysis of the publications of scientists and the personal data of forensic experts (64%) makes it possible to claim that it is sufficient and correct to consider a period of health regret - an impairment of the anatomical integrity of tissues, organs, or their functions, arising from the action of one or more factors of the external environment - physical (mechanical, thermal, barometric, radiant, etc.), chemical, etc.

Figure 1. Correlation of the concepts “violation of anatomical integrity...” and “and their functions” in relation to the term “harm to health”

Is the definition of harm to health as a disorder of anatomical integrity of tissues, organs or their physiological functions arising from the action of one or more environmental factors - physical, chemical and other, sufficient and correct?



Source: compiled by the authors based on the results of a sociological survey.

In the definition of harm to health one must put the union “or” between “violation of the anatomical integrity ...” “and their functions”. Otherwise, it can be interpreted as a violation of the integrity and function of the organ in the text. It is advisable to remove biological and mental factors. If we do not pay attention to the biological factor, all viral and bacterial diseases (influenza, syphilis, typhoid fever, cholera, tuberculosis, viral hepatitis, tetanus, and many others) should be considered harmful to health. Mental factor is also incomprehensible. It may include quarrel, conflict, fighting, fear, stress. In this case, this may relate to the sphere of psychiatrists but not of forensic experts.

The criminal legislation of Ukraine distinguishes between bodily injury by degree of severity: serious injury (article 121 of the Penal Code of Ukraine), moderate injury (article 122 of the PC of Ukraine) and minor injury (article 125 of the Penal Code of Ukraine) (VRU, 2001). According to article 121 part 1 of the Penal Code of Ukraine, serious bodily injury is bodily harm dangerous to life at the time of the injury or resulting in: a) loss of any organ or its functions; b) genital mutilation; c) mental illness; d) other health disorder accompanied by a permanent disability by at least one third; e) interruption of pregnancy; f) irrecoverable face deformation. According to article 122 part 1 of the Penal Code of Ukraine intentional bodily injury

is moderate intentional bodily injury which is not life-threatening and does not have the consequences provided for in the article 121 of the Penal Code of Ukraine. However, it is such a phenomenon that caused a long-term health disorder or a significant permanent disability of less than by one third. Article 125 of the Penal Code of Ukraine defines types of minor bodily harm (VRU, 2001). They include part 1 minor bodily injury; part 2 minor bodily harm resulting in a short-term health disorder or a minor disability.

The first sign of the intentional grievous bodily harm (article 121 part 1 of the Penal Code of Ukraine) is a danger to life at the time of the injury. Such a sign of grievous bodily harm is defined by the legislator in since some bodily injuries may not leave consequences, traces including visible ones, but at the time of infliction are dangerous to life. When comparing the signs of grievous bodily harm contained in the Penal Code of Ukraine, we found some inaccuracies in the Regulations. Therefore, one of the signs of grievous bodily injury is danger to life (part 2.1.1.a) (MHU, 1995). This interpretation does not correspond to article 121 of the PC of Ukraine, since the danger to life must be precisely at the time of the occurrence, which is further in paragraph 2. 2.1.2 determined that the danger to life is the damage that occurred at the time of the occurrence (causing) or clinically, at different intervals, cause life-threatening events (part 2.1.3.o) (MHU, 1995) and, without medical assistance, end or may end in death as they normally do. The Regulations in part 2.1.3 provide an exhaustive list of possible injuries that are life-threatening at the time of occurrence.

It is clear from some paragraphs that certain injuries to the body are only life-threatening when accompanied by severe shock or life-threatening phenomena, that is, it is the severity of the injury that is life-threatening. Therefore, they should be considered as one of the defining signs of life-threatening injury (Mitrofanov and Linov, 2010: 471).

In some articles of the Penal Code of Ukraine the legislator notes along with “danger to life” the phrase “danger to health”. The Rules contain definitions of only one of them concerning the “danger to human health”. In scientific literature “health danger” is interpreted differently. Paragraph 9 of the Resolution of the Plenum of the Supreme Court of Ukraine dated 06.11.2009 No 10 “On judicial practice in cases of crimes against property” provides clarifications “dangerous to life or health violence” (Article 187, part 3 of article 189 of the Penal Code of Ukraine) is the intentional infliction on the victim of a minor bodily injury resulting in a short-term health disorder or insignificant loss of capacity for work, moderate or serious bodily harm, as well as other violent acts which did not have these effects, but were dangerous to life or health at the time they were committed.

These include in particular violence that has led to unconsciousness or a low degree of torture, strangulation, dropping from a height, applying of *electro-shock devices*, weapons, special tools etc. (SCU, 2009). According to

the Decree, these are the consequences of bodily harm (articles 121, 122 and 125, part 2, of the Penal Code of Ukraine) and other possible consequences to which acts causing pain and suffering (physical and psychological) can be attributed. However, it remains unclear what effects can be considered to be dangerous to life or health at the time they occur.

The Rules on Forensic Determination of Injuries provide explanations of life-threatening injuries as injuries, at the time of occurrence (causing) or clinically at different intervals cause life-threatening phenomena (cf. P. 2.1.3. b) and which without medical assistance on their normal course end or may end in death. The prevention of death caused by medical treatment shall not be taken into account when assessing the threat to the life of such injuries "(part 2.1.2). However, the terminology "dangerous damage to health" is inconceivable as there are no clear criteria for distinguishing them. It is possible to solve this problem by their logical analysis, that is the threat to life automatically becomes the threat to health, as these categories are interconnected and mutually conditioned. However, it is impossible to compare them in enforcement.

Therefore, it is possible to resolve this issue in the following ways. The first way is trying to consider actions causing a treat to health as distinct from those that cause a treat to life. In such case, it can be considered to be any criminal misbehavior towards a person without the use of violence which poses a threat to life by its nature, for example, without the use of a weapon. The second method is to remove the prefix "or" and replace the union "and". Another way is to leave the phrase "life-threatening violence", thus eliminating "dangerous damage to health" in the provisions of the PC of Ukraine.

In order to avoid contradictions, we consider it useful to define this concept in the Rules. A majority (60.8 per cent) of respondents (forensic experts) indicate that such an innovation is appropriate.

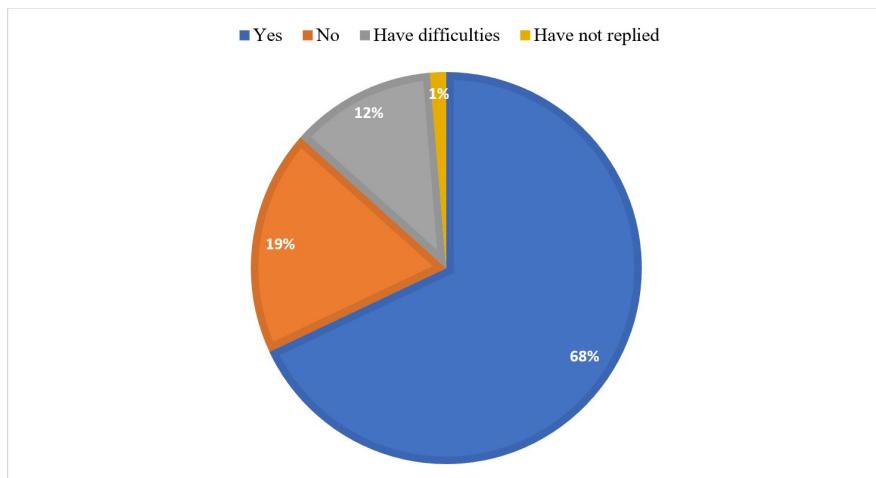
In addition, the Rules also define "non-life-threatening injuries" belonging to the severe injuries according to their final results and consequences: the loss of an organ or the loss of an organ's function - loss of vision, hearing, language, arm, leg and reproductive capacity.

Vision loss must be interpreted as total permanent blindness in both eyes or a condition where vision is reduced while counting fingers at a distance of two meters or less (visual acuity in both eyes 0.04 and below). But qualification issue in case of loss of one of the paired organs (eyeball, kidney etc.) as one of the signs of severe bodily injury remains unresolved:

As paired organs have a complementary and common function, the total loss of one such organ may have little immediate overall effect. Impairment of or loss of the second organ of the pair commonly results in a major increase in disability (VAC, 2019: n.p.).

Thus, the loss of one of the paired organs is one of the signs of severe physical injury - organ loss. The matter was resolved by the Zbarazh District Court of the Ternopil Region. The accused filed a motion at the hearing supported by his counsel, to appoint a complex forensic examination of the case. It should be decided either the loss of one testicle with an appendage is the loss of a whole organ (right and left testicle are functional), or it is a loss of a whole organ that will no longer be able to perform the function of reproductive capacity for fertilization, conception. If the main function of the organ is maintained (after the loss his parts of the right testicle are functioning), can the reproductive capacity for fertilization and conception be attributed to the injury of the right testicle as a moderate injury? Having analyzed evidence collected in their entirety the court imposed a punishment under article 121 part 1 of the PC of Ukraine for intentional grievous bodily injury which caused the loss of an organ. The injury to the right testicle with its loss is a serious injury (ZDC, 2016). Ternopil Regional Court of Appeal upheld the verdict of the Zbarazh District Court of the Ternopil Region of 5 May 2017 without changes (2017). Survey data of forensic experts demonstrates that the loss of one of the paired organs (eyeball, kidney, etc.) can be considered as one of the signs of severe injury 72 per cent (figure 2).

Figure 2. Can the loss of one of paired organs (eyeball, kidney etc) be considered as one of the signs of severe injury?



Source: compiled by the authors based on the results of a sociological survey.

Each organ has certain characteristics, performs certain specific functions and is a part of human body. For example, an auditory organ has signs and functions, but in the case of loss of an ear (an ear shell) which is not an organ but only one part of the hearing organ. That being the case, it belongs to one of the signs of serious injury. In case of loss of hearing function (one ear) – it is moderate injury significant permanent disability less than by one third, in this case it counts 15%. “Loss of vision in one eye or loss of eye is also determined to be severe bodily injury, as in this case there is loss of working capacity by more than one third or irrecoverable deformation of the face” (Mitrofanov and Linov, 2010: 129). However, it is difficult to accept some of the scientific claims, since the loss of an eye, which has led to one-sided blindness, cannot be attributed to such signs of grievous bodily harm as irrecoverable deformation of the face. According to part 2.1.8 of the Rules “when operational treatment (cosmetic surgery) is necessary to eliminate the damage to the face, it is considered irrecoverable”. In this case, the prosthetics of the eyeball are performed without surgery, so the loss of the eye as one of the paired organs belongs to one of the signs of severe bodily injury - the loss of an organ.

On the opinion of Zavalniuk the loss of an organ is considered to be both the anatomical loss of his body and the loss of its functions (2016). There is rather similar terminology in forensic medicine

Impairment of functions is a complete or partial disorder of the specific activity of an organism, its organs, tissues or cells under the influence of various internal or external factors. The disruption of the functions of any organ may be temporary and permanent (for the whole life) of minor, insignificant, moderately or grievous severity until its total loss. Persistent impairment of functions is generally covered by a sign of permanent disability to varying degrees (2016: 337).

Therefore, the term “impairment of functions” is broader than “loss of functions”. Thus, in accordance with the provisions of the Regulations:

1. hearing loss should be understood as total persistent deafness on both ears and such irreversible state where the victim does not hear a spoken speech at a distance of three to five centimeters from the ear shell. In case of hearing loss in one ear what was the result of the injury the actions of the perpetrator will be qualified in accordance with article 1, part 122 “Intentional moderate bodily injury” of the PC of Ukraine on the basis of a permanent loss of total capacity to work by less than one third (25%).
2. loss of language (speech)should be interpreted as the loss of the ability to express one's thoughts with vocal sounds that are understandable to others. A stutter is not to be interpreted as a loss of speech, except for severe stuttering, since it is impossible to perceive sounds, a certain word or a phrase.

3. loss of an arm or leg should be understood as the separation from the torso or loss of function (paralysis or other condition excluding their activity). Anatomical loss of the arm or leg is understood to mean both the separation of the arm or leg from the torso and amputation at or above the ulna or knee joints; all other cases should be treated as loss of limb and assessed against the basis of permanent disability.
4. loss of reproductive capacity must be understood as loss of capacity for coition or loss of capacity to fertilize, conceive and reproduce (childbirth). Some scholars have proposed new offences against human health – Illegal implementation of surgical sterilization of men or prevention of pregnancy in a woman without the consent of a person (Hrychuk, 2021).

Genital mutilation is also one of signs of bodily injury. This question of whether this topic should be identified has been discussed in the scientific community. For example, Baida determined that such actions are the result of religious or ethno-religious traditions and are performed as part of the rite of adulthood, preparation for marriage, adulthood, preservation of the virginity of women. The aim of the aforementioned actions is also often “deterrence” of sexual needs for ensuring “purity” of future family relations, ensuring “fidelity” of wife, preservation of family, increasing sexual satisfaction of man, membership in secret women’s associations, etc. (2016). Another group of scientists noted that this practice of “Female circumcision has no basis in any religion (religious texts do not prescribe such practice) and is related to deep-rooted cultural beliefs about women and girls, their hygiene, sexuality and place in society” (Shkodiak, 2019). The world recognizes 6 February as the International Day of Zero Tolerance for Female Genital Mutilation. “Although the practice of female genital mutilation is concentrated mainly in 29 countries in Africa and the Middle East, it is a universal problem that also affects some countries in Asia and Latin America. Destructive female genital mutilation continues spreading in some immigrant communities living in Western Europe, North America, Australia and New Zealand” (Hrychuk, 2021).

All kinds of female genital mutilation are considered to be mutilation (mutilatio; lat. “circumcision”, “shortening”) by the World Health Organization (hereinafter referred to as WHO) which is a violation of human rights (USAID, 2016: 64-75).

WHO identifies the following types of female genital mutilation:

1. Clitoridectomy is when the clitoris is partially or completely removed and, in very rare cases, the skin fold surrounding the clitoris is also removed.

2. Excision is commonly referred to as partial or complete removal of the clitoris and labia.
3. Infibulation usually occurs when the opening of vagina is narrowed by the creation of a cover seal which is formed by cutting and repositioning the minor labia or labia (sometimes by stitching). It can be combined with clitoris removal.
4. The fourth type includes all other harmful female genital procedures for non-medical purposes, such as injections, puncture, cutting, scraping, and burning of the genital area (Kushpit, 2020).

All female genital mutilation intentionally alters or injures the female genital organs for non-medical reasons, such as removal, infibulation, or any other mutilation, in whole or in part, of the labia majora, labia minora or clitoris (Borosdina *et al.*, 2018).

In summary, a review of the special literature reveals that female genital mutilation is prevalent throughout the world.

Even article 38 of the Istanbul Convention makes it clear that liability arises in the case of female genital mutilation.

“...such injuries are directly related to certain religious movements and ethnic groups not inherent in Ukrainian society. In addition, the basis for criminalizing the modification of certain additional grounds to the existing PC is the corresponding criminological ground. It also should be noted that reference to the fact that the mutilation was carried out with the consent or at the request of the minor is void and the consent of the adult can only be regarded as a mitigating circumstance, since there is an express prohibition on such acts. Secondly, such injuries do not correspond to that level of privacy in a person’s life, may not be ground for non-interference of the person in the private life of the victims” (Pazenko, 2019: 59).

In our opinion, the rights of men and women in all legal relations in society should be equalized, in order to eliminate social barriers and create equal social opportunities. Therefore, it is not appropriate to apply criminal law protection exclusively to women or men. In case of damage to an organ or a part thereof the function of which was lost earlier (before the injury) the severity of the damage is established on the basis of the actual duration of the impairment.

Mental illness as a result of injury to health caused by serious bodily harm is a matter for forensic and psychiatric experts. When studying this issue, we have noticed that scientists use different terminology, videlicet: “mental disorder”, “mental disease”, “psychiatric disease”, “psychiatric disorder” in special literature. Law of Ukraine “On Psychiatric Care” in Art. 1 defines psychiatric disorders as disorders of mental activity recognized as such in accordance with the International Statistical Classification of Diseases, Injuries and Causes of Death in force in Ukraine (VRU, 2000).

The Law of Ukraine “On Psychiatric Care” in Article 1 defines psychiatric disorders as disorders of mental activity established in accordance with the International Statistical Classification of Diseases, Injuries and Causes of Death in force in Ukraine (VRU, 2000). Analyzing the aforesaid, we consider that the terms “mental disorder”, “mental disease”, “psychiatric disease”, “psychiatric disorder” to be synonymous. The legislation of Ukraine uses them in different ways at the same time. Emotional illness must be understood as mental disease (mental disability). Reactive states (psychosis, neurosis) associated with damage (part 2.1.5) (MHU, 1995) cannot be classified as mental diseases. Therefore, the terms “mental disorder”, “mental disease” is synonymous. The term “mental disease” is a relic of the past system, the term “mental disorder” is also widely used. In our opinion the legislation of Ukraine should have a common terminology to prevent misunderstanding and interpretation of these terms, namely “mental disorders”, since in national legislation and ICD-10 is used exactly the name of brain diseases.

The Rules clearly state the duration and curability of a mental illness an injury resulting in the development of a mental illness, regardless of its duration and degree of curability.

The next sign of grievous bodily injury is another health disorder associated with a permanent disability by at least one third (at least 33%).

“Health disorder”, “disability”, “permanent disability” and “permanent loss of capacity to work” are considered to have different meanings as signs of bodily injury.

A health disorder is to be understood as a painful process directly related to damage, consistently developed (Regulations, part 2.1.6) or painful state of a person or disruption of normal human activity. Persons who are employed and those who are not employed (children, pensioners, persons with disabilities, etc.) may develop a health disorder as a result of any bodily injury. Therefore, persons who do not work are established to a health disorder in case of injury and another group to a health disorder related to permanent disability.

Articles 121, 122, 125 of the PC of Ukraine refer to loss of capacity to work. However, loss of working capacity is possible to be general and professional. The provisions of the articles of the Penal Code of Ukraine do not specify the type of working capacity referred to which provokes a lot of discussions. Thus, “the overall working capacity is a person’s ability to serve himself or to perform unskilled job in normal living conditions” (Zavalniy, 2016: 348). “Professional ability to work is the ability of a certain employee to work in his profession (specialty)” (Mitrofanov and Linov, 2010: 201). Thus, in case of bodily harm, it is possible only general loss of capacity, since it is the same for all. The loss of working capacity is defined in civil

law relations and will be different for each person, as these persons have different professions (specialties).

The general disability must be stable (permanent). Rules define it as irreversible loss of function, not fully restored. That means that it is the kind of disability that lasts during the whole life.

We consider it advisable not to refer the definition of “permanent loss of capacity to work” to signs of grievous bodily injury which is being discussed in the scientific community. For example, if it is assumed that professional efficiency, like general efficiency, is a sign of grievous bodily injury, then the intentional breaking the fingers of a pianist (violinist, etc.) in order to further prevent performance of professional functions, these injuries should be qualified in accordance with article 121 of the PC of Ukraine. In such a case, the existing legislation does not give forensic experts the power to determine the loss of professional capacity. Such functions are assigned to the Medical and Social Expert Commission (MSEC) who are not entitled to determine the severity of bodily injury.

The term “permanent capacity to work” as an indicator of the severity of bodily injury, article 121, 122 part 1, article 125 part 1 of the PC of Ukraine should be replaced by “general permanent capacity to work”. Interviews with forensic experts (64 %) make it possible to confirm the advisability of including terminology in the above-mentioned articles of the Penal Code “general permanent capacity to work”. The Rules stipulate that the amount of permanent (stable) loss of general working capacity in case of damage shall be determined after the injury has occurred and shall be defined on the basis of objective data according to the documents governing the work of the Medical and Social Expert Commission. Therefore, it is necessary to distinguish the terms “health disorder related to a permanent disability” and “health disorder related to a permanent loss of general capacity to work”. Consequently, it is necessary to make appropriate amendments to both the Penal Code and the Regulations.

“Loss is an action when someone is left without someone, something, loses someone as a result” (Dictionary, n.d.). Basically, it’s a 100% loss of ability. Such terminology does not correspond to the grounds stated in the PC of Ukraine, since the legislator establishes a certain percentage of such “loss”. Therefore, it is advisable to use the term “reduction”.

When asserting the severity of bodily injury, the expert shall take into account not the duration of the temporary disability or treatment, but shall objectively determine the duration of the impairment, objectively determine the general condition of the victim and take into account the duration of the impairment and the time which the victim need to recover (Zavalniy, 2016: 381).

One of the signs of grievous bodily harm is the irrecoverable deformation of the face. The Rules for the Determination of the Degree

of Bodily Injury stipulate that the Forensic Expert shall determine whether the injury is recoverable or irrecoverable. The recovery should be interpreted as a significant reduction of the signs of pathological changes (scarring, deformation, facial dysfunction etc.) over time or not by surgical interventions. When operational treatment (cosmetic surgery) is necessary to remove injuries, the damage to the person is considered to be irreparable (MHU, 1995). Thus, the forensic expert defines the sign of severe bodily injury as irreparable deformation of the face only concerning "irreparability" (or as stated in the Rules "irrecoverable"). The question of the definition of term "face disfigurement" and the identifying the specialist who is responsible to establish this remains unclear.

Criminal law theory and scholars suggest that a person is considered to be disfigured when he or she has an unpleasant, disgusting appearance (for example, no nose or lips). The severity of the harm caused by disfigurement is not only physical but also psychological since it humiliates the victim and causes him severe emotional distress and anguish (Kyrenko, 2002: 45). This position claims our attention. However, the theory does not clearly define the criteria for disfigurement and who is responsible to establish those criteria.

Discussions also arise on defining the boundaries of irreparable facial disfigurement. Kyrenko noted that permanent disfigurement is possible not only on the face, but also on other parts of the body. In cases of disfigurement of the back, arms or other parts of the body, a person feels depressed, worries that he cannot wear open clothes, actively participate in sports with all others, go to the beach etc. This problem should therefore be solved and it should be recognized that not only face but also other parts of the body may be classified as serious injuries. The author proposes to supplement article 121, part 1 of the PC of Ukraine with such sign of serious bodily injury as irreparable disfigurement of face or body (2002: 45-48). 76.9 % of the forensic experts questioned replied positively to the question: "Is it necessary to specify in the Regulations the anatomical boundaries of the person taking into account and ear shells? ". This indicates that national legislation requires changes and additions and indicates the practical importance of the study. Therefore, in order to eliminate contradictions in the Rules, it is necessary to specify the anatomical boundaries of face taking into account the auricles, because the topographic anatomy of the facial section of the head which is governed by the forensic experts determines the boundaries of face without auricles.

In addition, according to the analysis of criminal proceedings, the expert determines the type of injury, its characteristics and the mechanism of formation, and whether the injury is recoverable or irrecoverable (part 2.1.8). However, in order to establish "facial deformation" other participants of the process - a specialist, namely a cosmetologist, are invited. Therefore,

in our opinion, in order to resolve procedural disputes, the Rules should provide for the right of a forensic expert to determine definitively the degree of injury in cases of undoubted post-traumatic facial disfigurement. Only 36.9% of forensic experts interviewed determined that such changes were inappropriate.

I. Mitrofanov and M. Linov note that “life-threatening harm can be both bodily harm and disease and pathological conditions” (2010: 188). Russian scientists Veklenko and Galiykova single out such a possible consequence of a serious bodily injury as a pathological condition. It is defined as a stable deviation from the norm, having a biologically negative value for the organism (2004) medical literature. Harm to health includes bodily harm as the most pronounced traumatic form of health disorder, together with illness and pathological condition notions used to denote pathological changes which are not bodily injuries (Popov, 1999: 5).

Conclusion

Clarification of problems of criminal law protection of human health makes it possible to adopt a comprehensive approach in defining the main directions of improvement of the normative regulation of criminal liability for infringements of human health and in accordance with them to develop a holistic theoretical model of such liability regulation. We consider it advisable to specify a medical definition of “harm to human health” violation of the anatomical integrity of tissues, organs or their functions arising from the action of one or more factors of the external environment - physical (mechanical, thermal, barometric, radiant, etc.), chemical, etc. In this definition of term harm to health one must put the union “or” between “violation of the anatomical integrity ...” “and their functions”. Otherwise, it can be interpreted in the text of the Rules as a violation of the integrity and function of the organ. Biological and mental factors should also be removed. Biological factors include all viral and bacterial infectious diseases (influenza, syphilis, typhoid fever, cholera, tuberculosis, viral hepatitis, tetanus, and many others) that do not need to be considered to be harmful to health. The mental factor is a quarrel, conflict, fear, stress, depression, which is the domain of psychiatrists, not forensic experts.

Within the specified directions, it is proposed to amend the list of criminal offences against the health of a person in the Penal Code, namely the main grounds: Article 121. Intentional infliction of grievous bodily harm.

1. Intentional infliction of grievous bodily harm, that is, life-threatening at the time of the infliction or resulting in the loss of any organ, including one of the paired organs, or of its functions, mental disorder, or other health disorder, with a steady reduction in the overall working capacity by at least

one third or termination of pregnancy or permanent disfigurement of the person.

Article 122. Intentional infliction of moderate bodily injury

1. Intentional infliction of moderate harm to health which is not life-threatening and does not have the consequences provided for in article 121 of the existing Penal Code, but has caused a long-term health disorder or a significant long-term decrease in general working capacity by less than one-third.

Article 125. Intentional minor injury to health

1. Intentional infliction of a minor injury to health resulting in a short-term impairment of health or an insignificant permanent reduction in general working capacity.

In addition, considering the above said considering the provisions of the by-laws and regulations which guide the work of general forensic experts in determining the degree of bodily harm, there is a need to develop fundamentally new instruments (Rules for the Forensic Determination of the Severity of Bodily Injury) which will define the signs of bodily injury and contain definitions and clarifications of the evaluation terminology. In this way, the results obtained can be useful in law enforcement in determining the severity of bodily harm and in standard-setting, scientific and scientific-pedagogical work in the teaching of criminal law and medical subjects.

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UNIVERSIDAD
DEL ZULIA

CUESTIONES POLÍTICAS

Vol.39 N° Especial

*Esta revista fue editada en formato digital y publicada
en octubre de 2021, por el Fondo Editorial Serbiluz,
Universidad del Zulia. Maracaibo-Venezuela*