

## The system of criminal legal protection of life and health under health care provision

El sistema de protección penal de la vida y la salud en virtud de la prestación de asistencia sanitaria

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### ABSTRACT

The value of human health cannot be overestimated. We considered the creation of an effective system of its protection is a priority for all branches of law. We believed that number of objective and subjective factors determined the necessity of question regards the changing of the system of criminal law health care in the provision of medical care last years in legal science and practice. The authors did not dismiss the need for a qualitative change in the criminal law, while argued the necessity of a preceding systematic study of the existing criminal legal model for the protection of life and health in the provision of health care. We also suggested to analyst the law enforcement practice and confirmed the impossibility of unjustified extension of criminal liability.

**Keywords:** Malpractice, protection of life and health, professional crime, criminal liability, medical worker, crime.

### RESUMEN

El valor de la salud humana no puede ser sobreestimado. Consideramos que la creación de un sistema efectivo de protección es una prioridad para todas las ramas del derecho. Consideramos que varios factores objetivos y subjetivos determinaron la necesidad de cuestionar el cambio del sistema de atención de la ley penal en la provisión de atención médica los últimos años en la ciencia y la práctica jurídica. Los autores no descartaron la necesidad de un cambio cualitativo en el derecho penal, mientras que argumentaron la necesidad de un estudio sistemático anterior del modelo legal penal existente para la protección de la vida y la salud en la provisión de atención médica. También sugerimos al analista la práctica de aplicación de la ley y confirmamos la imposibilidad de una extensión injustificada de la responsabilidad penal.

**Palabras clave:** Negligencia, protección de la vida y la salud, delito profesional, responsabilidad penal, trabajador médico, delito.

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## INTRODUCTION

The current model of criminal-legal protection of health in the provision of health care and medical services consists of many norms of Criminal Code of the Russian Federation, which are not united in one group, but are located in different sections and chapters. In general, all the crimes committed by medical personnel are divided into professional and official crimes. Professional crimes include the crimes causing death by negligence as a result of improper performance by a person of his or her professional duties (Part 2 of Article 109); crimes causing serious harm to health through negligence as a result of improper performance by a person of his or her professional duties (Part 2 of Article 118); infecting another person with HIV as a result of improper performance by a person of his or her professional duties (Part 4 of Article 122); illegal production of abortion (Article 123); failure to provide assistance to a patient (Article 124); illegal placement in a psychiatric institution (Part 2 of Article 118).

First, negligence (Article 293), as well as traditional corruption crimes is considered official one.

An analysis of judicial and investigative practice leads to the conclusion that, in most cases, doctors and other medical personnel are held criminally liable for crimes under the Criminal Code, namely by Article 109 Part 2, 3; 124 Part 2; Article 238 Part 2, 3; Article 293 Part 2, 3.

During 2016-2019, there has been increased attention from the medical community to the problem of legal liability for offences committed in the professional sphere of physicians. At the same time, the media actively discussed the cases of bringing doctors to criminal responsibility for the so-called "malpractices". Previously, the Investigative Committee of the Russian Federation, in cooperation with the National Medical Chamber, prepared a proposal to introduce two new articles into the Criminal Code of the Russian Federation on iatrogenic crimes (crimes committed by medical personnel in the course of medical care).

Obviously, these discussions bring to the surface the important problems: the extent of responsibility of physicians for causing harm to patients during treatment and the existence of an overall effective legal system for the prevention of offenses in the medical sphere.

Discussion of these problems arose with renewed force after the publication of criminal law statistics by the Investigative Committee of the Russian Federation. If we add data from other sources, the picture is as follows. Over the past five years, the number of civil complains about improper medical assistance have increased threefold: from two to six thousand. In 2017, the number of complaints about medical assistance to the Investigative Committee of Russia was 6050. This is 1100 greater than in 2016. In 2012, there were only 2100 complaints (The Investigative, 2018).

On the last day of September 2016, Alexander Bastrykin, Head Investigative Committee of the Russian Federation announced criminal statistics on cases of malpractices. "The figures are terrible: in 2015, it was proved that 712 people, including 317 children, died at the hands of doctors; in 2016, the number of people who died in the first half of the year was 352 people, including 142 children. In the first half of 2016, 419 criminal cases were initiated for such crimes" (The money, 2018). In 2018, 2,200 criminal cases were initiated for malpractices or poor quality of medical care, this was by 24% more than in 2017, when 1,800 criminal cases were initiated, according to RT, cited the Russian Investigative Committee (The number, 2018). In 2017, 175 criminal cases involving malpractices were referred to the courts, according to presentation by the Russian Investigative Committee. This is by 11 more than in 2016.

The majority of doctors convicted in 2017 (74.7%) were accused of causing death by negligence (Article 109 of the Russian Criminal Code). The provision of services that do not meet safety requirements (Article 238 of the Criminal Code) is 10.9%. Another 6.3% were convicted of causing serious harm through negligence (Article 118 of the Criminal Code). The rest of the people were convicted of negligence and failure to assist a patient (The number, 2018).

If we compare these data with the indicators of 2012, we can state that the number of complaints about the actions of doctors has increased threefold, and the number of criminal cases is about seven times more. However, experts believe that this is only the tip of the iceberg, and in fact, the number of malpractices is much higher. "Not every such case is prosecuted, and only 10% of all criminal cases go to court. That is, in 90% of cases, criminal cases against doctors are terminated," said Svetlana Petrenko, Official Representative of the Russian Investigative Committee (The Investigative, 2018).

The Main Department of Criminalistics of the Investigative Committee of the Russian Federation studied the materials of 143 criminal cases that were pending in 2016-2017. The results of the analysis revealed that the majority of such crimes are committed by the surgeons (27%), by obstetricians and gynecologists (17%), and by anesthesiologists and intensive care specialists (13%). Most of the doctors who committed the crime (58%) were male. The agency examined a large number of crimes that led to the death of 123 people, and 20 cases of injury to patients. The most common causes of malpractices are misdiagnosis and impaired screening (White negligence, 2017).

In 2018, the Federal Compulsory Medical Insurance Fund of the Russian Federation released statistics on deaths in medical care. In the first nine months of 2017, experts reviewed 417,500 medical records. Violations were detected in 48.5 thousand cases. At the same time, the defects that led to the death, including violations in the performance of necessary treatment and diagnostic measures and necessary clinical protocols, occurred in 3177 cases. Pathologists

have higher figures: according to their data, significant discrepancies between lifetime and postmortem diagnoses are 25-30%. Approximately 3,500 complaints were received annually from patients by insurance companies. In 88% of cases, the conclusions were made in favor of the patient, and in 12% of cases, the actions of medical workers are justified (White negligence, 2017).

Thus, we can state the increase in the number of complaints from patients about the quality of medical care and an increase in the number of violations in the provision of medical care.

One of the reactions to this situation is probably the proposal of the Investigative Committee of the Russian Federation to add new compositions to the Criminal Code of the Russian Federation. In July 2018, at the conference of the National Medical Chamber, the draft amendments to the Criminal Code of the Russian Federation concerning the so-called “doctor’s cases” were officially announced. Two separate medical articles were proposed to be introduced into the Criminal Code of the Russian Federation:

- Article 124.1: which provides for liability for improper provision of medical care or services”, if it resulted in the death of a person or two or more persons or “death of a human fetus and/or causing serious harm to human health”;

- Article 124.2 provides for criminal liability for entering false information in medical records, concealing or destroying it, as well as for “substitution of biological materials in order to conceal the improper provision of medical care by another medical worker”, the actions of which resulted in death, serious injury to health or death of the embryo.

Based on the content of the proposed amendments, if adopted, an independent group of professional crimes will appear in the criminal law, which will make it impossible to bring medical workers to criminal liability under Articles 109, 118, and 238 of the Criminal Code of the Russian Federation. However, this draft law, in our opinion, is not fully elaborated and logical. First of all, Article 124.1 of the draft law contains the concepts of “medical care and service”, although the concepts themselves are not disclosed in the note to the article, there is no definition of these definitions and special regulatory acts. This may lead to a wide interpretation and uncertainty of the grounds for criminal liability.

This criticism also applies to the concept of “improper service provision”. What, accordingly, raises the question and what is appropriate? If there is no objective impossibility to formalize and standardize medical services, i.e. to determine the rules of proper provision of medical care, such wording of the criminal law provision does not eliminate the issues arising in the qualification of crimes committed in the provision of medical services related to the establishment of quality and safety of such services. Such wording of the proposed crime creates the risk of unjustified prosecution.

When analyzing the composition of the crime proposed in Article 124.2 of the Criminal Code of the Russian Federation, there is certainly a question about the possibility of attributing such crime to the committed by medical workers in the process of performing professional duties. If yes, we have to refer to Chapter 16 of the Criminal Code of the Russian Federation. According to the objective signs reflected in the article’s disposition, this crime is more likely to refer to a type of forgery. Based on the characteristics of the subject, it may be placed in chapter 30 or 32 of the Criminal Code. It should be taken into account that the above chapters already contain a number of elements of crimes providing for liability for forgery and production of forged documents, which makes it possible to conclude that there is no need for a special rule establishing liability for entering false information into documents in the narrow professional sphere.

## DEVELOPMENT.

In our opinion, the introduction of independent professional elements of crimes into the criminal law is premature and will lead to excessive casualization.

Problems of law enforcement of existing articles can be eliminated by forming a common terminological base and explanation of issues of proper qualification of crimes by the Supreme Court of the Russian Federation.

Thus, we have come to the conclusion that the proposal of the Investigative Committee of the Russian Federation on introduction of new crimes in the sphere of medical activity is a response to the increasing number of complaints of citizens about poor quality of medical care.

This innovation was negatively perceived by the professional medical community. It fears expansion of the scope of criminal responsibility, including for innocent infliction of harm, for the so-called “medical mistake.

It should be noted that in the legal literature there have been suggestions about the need to change the current system of criminal responsibility for improper provision of medical care. Let us highlight the main ones:

1) recognition of a medical worker as a special subject of a crime and fixation of the corresponding signs in the disposition of an independent article of the Criminal Code of the Russian Federation (the main structure of the crime): Article 109.1 “Causing serious harm to health or death by a medical or pharmaceutical worker due to improper performance of their professional duties by a medical or pharmaceutical worker” (Bagmet, Petrova, 2016).

2) Changes related to new developments in medical science imply the introduction of new criminal law offences: cloning and other genetic manipulation, illegal conduct of human biomedical research or application of prohibited methods of diagnosis and treatment, illegal in vitro fertilization or embryo implantation, illegal trafficking of human organs, tissues, embryos, illegal removal of organs or tissues of a deceased person for transplantation or other purposes. The commission of a crime by a medical professional in these elements of the crime should be a qualifying feature (Tatarkin, 2007);

3) it is proposed to supplement the Criminal Code of the Russian Federation with the following crimes on the grounds of objective side (method of committing a crime, professional field): illegal artificial insemination and implantation of a human embryo, use of a human embryo for purposes other than implantation, illegal medical experimentation, illegal trafficking of human organs and tissues, illegal performance of medical sterilization (Nikitina, 2007).

In our opinion, the current model of criminal-legal protection allows to ensure proper protection of public relations arising in the course of providing medical assistance in the course of professional activities. In order to understand the issue, it is necessary to understand that the Criminal Code of the Russian Federation provides for a sufficient set of circumstances excluding the criminal liability of doctors for innocent infliction of harm. This is Article 28 of the Criminal Code of the Russian Federation - innocent infliction of harm; Article 41 of the Criminal Code of the Russian Federation - reasonable risk; Article 39 of the Criminal Code of the Russian Federation - extreme necessity. These norms allow doctors to provide the necessary medical assistance, doing everything possible in this situation to save the life and health of the patient without fear of liability for innocent infliction of harm.

The problems of “doctor’s cases”, the increasing flow of patients’ complaints, lie, rather, in the field of law enforcement, which can be eliminated by forming a common terminological base and explaining the issues of proper qualification of crimes by the Supreme Court of the Russian Federation. At present, as we have already mentioned, the main crimes in “medical cases” are Article 109 (Part 2.3), Article 118 (Part 2) of Article 238 (Part 2.3) and Article 293 (Part 3) of the Criminal Code of the Russian Federation. Each of the acts under consideration has similar consequences, i.e. causing death or serious harm to health with a careless form of guilt. However, the compositions have significant differences in all four elements of the crime.

Next, let us consider how these compositions of crimes are differentiated, the mistakes made in judicial and investigatory practice and the reasons of occurrence of such mistakes - imperfection of the model of criminal-legal protection of the public relations arising at rendering of medical aid or omissions of the lawmaker in interpretation of separate features of crimes.

Initially, it is a question of proper qualification of acts under Article 109 of Part 1.2 or Article 238 of the Criminal Code of the Russian Federation in case of death by negligence as a result of improper performance by doctors of their professional duties.

Such acts should be based on the object of the crime: in the case of death by negligence in the provision of medical services that do not meet the requirements of safety, the main object of the attack is the life and health of an unlimited number of people (danger to public health), the life and health of the individual in this case is an additional object.

On a practical example it can be illustrated as follows: the patient’s death from the drug administration: if the administered drug has been certified on the territory of the Russian Federation, meets the safety requirements and is recommended for the treatment of the relevant disease, but at its administration there were violations (violation of dosage, lack of taking into account the presence of contraindications, etc.), which caused consequences in the form of death of a person, the act should be qualified under Article 109 Part 2 of the Russian Federation Code. If a patient is injected with a non-certified drug that is not allowed for use, medicines of the off-label, etc., the actions of a medical worker should be qualified as a violation of safety requirements in the provision of services under Article 238 of the Criminal Code of the Russian Federation.

Article 238 of the Criminal Code of the Russian Federation often qualifies acts similar to the following: by the verdict of the district court the obstetrician-gynecologist P. was found guilty of committing a crime under Part 2 of Article 238 of the Criminal Code of the Russian Federation. This was committed under the following circumstances: upon arrival of the woman in the maternity ward with a diagnosis of “premature delivery”, P., having visually examined her, decided to give birth naturally due to the small weight of the fetus. At the same time, P. did not study the patient’s medical records, in which the doctor who observed the course of pregnancy was given recommendations for the operation “caesarean section” in connection with the individual characteristics of the patient. As a result, meconium aspiration occurred and the child was born in a severe state of meconium mass, which was caused by improper delivery tactics chosen by the doctor (Cassation, 2011).

Such acts, in our opinion, do not constitute a crime under Article 238 of the Criminal Code of the Russian Federation, but should be qualified under Article 109 or Article 118 of the Criminal Code of the Russian Federation, depending on the consequences. At present, the Prosecutor’s Office, as well as the courts are increasingly adhering to this position. Let us give an example from the materials of judicial and investigative practice.

Anonymous A. was found guilty of a crime under Part 2 of Article 238 of the Criminal Code of the Russian

Federation committed under the following circumstances: on June 06, 2014, Anonymous B. was admitted to hospital with a diagnosis of “Acute Coronary Syndrome”. According to the results of the examination of patient A. ignored the records in the medical history of patient B about the need to conduct daily observation of his electrocardiogram, neglectfully treated his duties, confirmed the earlier incorrect diagnosis of “Acute Coronary Syndrome”, and then handed the patient, whose condition was assessed as severe, under the supervision of a physician on duty in the emergency department, leaving him without constant supervision of a specialist in the field of cardiology. As a result, the patient was provided with a medical service of inadequate quality, i.e., not meeting the safety requirements for the life and health of the patient who passed away. At the request of the prosecutor in the court of appeal, the case was returned for preliminary investigation due to the unjustified qualification of the guilty person’s actions under Article 238 and the need to qualify them under Part 2 of Article 109 of the Criminal Code of the Russian Federation, because A. failed to comply with the requirements of the cardiologist’s job description, according to which he had to ensure an appropriate level of examination and treatment of the patient, left him in the acute coronary pathology department of the primary vascular center without constant supervision of cardiologist.

A similar position of the court was formed in the well-known “Elena Misyulina’s case”, which was also aimed at additional investigation in fact in connection with the incorrect qualification of the doctor’s actions under Article 238 of the Criminal Code of the Russian Federation.

When qualifying the actions of medical personnel under Art. 109 or 238 of the Criminal Code of the Russian Federation, it is necessary to strictly follow the terminology of disposition of Article 238, which establishes responsibility for the provision of services that do not meet the requirements of safety of life or health, and for no other acts.

The definition of the term “safety” is given in the National Standard of the Russian Federation “Terms and Definitions in the field of life and health safety”, approved by the Order of the Federal Agency for Technical Regulation and Metrology No. 1841-st of 26.11.2014. According to this, safety is a condition in which the risk of harm (to persons) as a result of damage does not exceed an acceptable level.

Order of the Ministry of Health of the Russian Federation No12 of 22.01.2001 “On the introduction of the industry standard “Terms and definitions of the standardization system in health care” contains a similar definition: the safety of medical care is understood as the absence of unacceptable risk associated with the possibility of damage.

The criteria for the safety of medical services at the normative level are not established. Therefore, when defining the safety of a medical service, we can only proceed from the general definition of the term. Compliance with the safety requirements of a medical service implies that there is no unacceptable medical risk, regardless of the outcome of the service itself. Criminal law terminology refers to a reasonable risk.

The validity of the risk of medical activity, in our opinion, can be determined by a set of conditions:

- 1) the focus of the activity of a medical worker on the achievement of socially useful results, the goal is the patient’s recovery, preservation and improvement of the quality of life;
- 2) methods of diagnostics and further treatment applied in the course of rendering medical services are shown to the patient, there are no contraindications for their application (professional criterion);
- 3) the medical worker has the necessary and sufficient qualification in the relevant field of medicine. Such qualification shall be duly confirmed - diplomas, certificates, certificates of professional development;
- 4) there is no inevitability of harm;
- 5) a positive goal (socially beneficial result) could not be achieved in the absence of risk;
- 5) the risk is not associated with the probability of harm to an undetermined circle of persons;
- 6) the patient is properly informed about possible adverse consequences of diagnosis and treatment (probability of risk).

If all the above criteria are met, the medical service is safe, which excludes the qualification of the act under Article 238 of the Criminal Code of the Russian Federation. Compliance with the professional safety criteria is the responsibility of medical professionals and is established in a specific criminal case through a forensic medical examination. The other content criteria are formal and legal and can be established in the course of a preliminary investigation, which will eliminate errors in qualification.

When bringing to criminal responsibility under Part 2 of Article 109 of the Criminal Code of the Russian Federation, not only the safety of the provided, but first of all its quality is subject to criminal-legal assessment.

Special legislation on health protection operates not only with the term “safety”, but also with the quality of medical services. In accordance with the provisions of Federal Law No. 323-FZ of 21 November 2011 “On the

Fundamentals of Public Health Protection in the Russian Federation”, they must meet the requirements not only for safety and quality.

In this regard, for the proper qualification of what has been done, it is necessary to define the terms: what is the safety of medical service and what is its quality. In accordance with sub-clauses 1 and 2 of this Law, the following terms should be used: what is the safety of a medical service and what is its quality?

According to 21 Art. 2 of the above Federal Law No. 323-FZ, the quality of medical care - a set of characteristics reflecting the timeliness of medical care, the correctness of the choice of methods of prevention, diagnosis, treatment and rehabilitation in the provision of medical care, the degree of achievement of the planned result. In the recommendations given to the World Health Organization among the main criteria of quality of medical care are the qualification of the doctor, his compliance with the technology of diagnosis and treatment, as well as patient satisfaction. A similar provision is enshrined in the decision of the WHO Regional Office for Europe: medical care that meets the standards of medical technology in the absence of complications resulting from treatment and achievement of patient satisfaction should be considered quality (Erofeev, Sergeev, 2014).

Based on the above, we believe it is possible to determine the following legally significant characteristics (attributes) of the quality of medical care:

- 1) Appropriate qualification of the medical worker corresponding to the scope and type of medical care provided;
- 2) timeliness of medical assistance to the patient;
- 3) exclusion of negative consequences of medical intervention for the patient;
- 4) reasonable choice of the method of treatment and diagnostics of the disease;
- 5) carrying out treatment and diagnostics in accordance with the requirements of safety of medical care.

As can be seen, the proposed criteria for assessing the quality of medical care, as opposed to its safety, are more in the field of medicine than rights, and require special knowledge. At the same time, we do not consider it necessary to include the patient's satisfaction with the medical care provided as the abovementioned attribute is not related to either legal or medical, and is not subject to objective assessment. In the legal literature, the opinion is expressed that it is necessary to abandon the notion of quality of medical care and limit the assessment only to safety estimation.

A.V. Tikhomirov (2008) comes to the conclusion that the concept of quality does not apply to medical care - medical care has only a safety characteristic, and in turn the medical service in the commodity part (service) is characterized by both quality (related to the price) and safety. Let us not agree with this opinion. Safety of medical services is a legal concept to a greater degree. Non-compliance with safety requirements has a greater public danger than the provision of poor quality medical services, which is reflected in the sanctions of Article 238 Part 2 (CC of Russian Federation).

Consideration of the issue of legal criteria for the quality of medical care cannot be completed without addressing the problem of the so-called “malpractice”. Currently, this term is widely used not only in the media, but also in legal practice. The term “malpractice” itself is not defined normatively and is essentially, if not ordinary, then at least evaluative and its use is incorrect in the legal qualification of what has been done.

Specialists from the Ministry of Health and the Russian Federal Service for Consumer Rights Protection and Human Health believe that it is correct to waive criminal liability for malpractices. In their opinion, the error in this case is a bona fide mistake in treatment and diagnosis (Interviews, 2018). It is quite common to believe that a malpractice is a crime in which medical personnel do not properly perform their professional duties. This position was voiced in the State Duma of the Russian Federation “A working group on legal protection of medical workers will be created in the State Duma, according to the official website of the State Duma Committee on Health Protection. Deputies want to protect doctors from criminal liability in case of unexpected complications in patients. Doctors should not be criminally liable for unexpected complications in the case of patients, but they should be insured for their liability to patients, just as in the rest of the world,” the explanatory note says. - The problem can be solved by adjusting the current legislation. According to parliamentarians, one of the problems is the vagueness of the term “doctor's mistake,” which is not clearly spelled out in any of the regulations. The working group will have to correct this legislative gap (The Investigative, 2018).

The term “malpractice” does not have any criminal legal content or meaning. Moreover, it confuses the problem of doctors' responsibility and its discussion, mixing the concept of guilty, including careless and innocent harm. The Big Medical Encyclopedia defines: “Malpractices are bona fide mistakes of a doctor in his professional activity, which are based on: imperfection of the modern state of medical science and methods of examination of a patient, objective external conditions of a doctor's work, as well as insufficient training”. That is, the medical approach to the definition of malpractice excludes any illegal actions, violations of the requirements to the quality of medical services, and presupposes quite legitimate, conscientious behavior of a medical worker, but has led to negative consequences for the patient.

The Criminal Code of the Russian Federation does not contain the concept of error. However, the theory of criminal law unequivocally refers an objective error to the definition of guilt of a person. A bona fide mistake in the actual circumstances of the case may indicate the presence of negligent guilt. The penalty for careless crimes comes if the person did not realize the possibility of socially dangerous consequences, but in the circumstances of the case could and should have realized. If a person who committed a socially dangerous act did not realize and could not realize the public danger of his actions (inaction) or did not foresee the possibility of socially dangerous consequences and in the circumstances of the case should not have or could not foresee them, he acted innocently. Doctors-practitioners may object that they often foresee the possibility of both favorable and unfavorable outcome when carrying out complex operations or in a difficult situation. In addition, the unfavorable outcome may be caused by an accidentally interfering factor. Nevertheless, even here the Criminal Code of the Russian Federation allows to understand and, depending on the situation, to apply Article 41 "Reasonable risk" or to evaluate what happened as a case, accident (Part 2 of Article 28) and not to bring the doctor to justice. Particular attention should be paid to the fact that the institute of reasonable risk guarantees doctors the possibility of risky actions. It is not a crime - it is written down in Article 41 of the Criminal Code of the Russian Federation that the infliction of harm to the interests protected by the criminal law at a reasonable risk to achieve a socially useful goal. The risk is recognized as reasonable if the specified purpose could not be achieved by actions (inactions), unrelated to the risk and the person who allowed the risk has taken sufficient measures to prevent harm to the protected criminal law interests.

At the same time, the study of criminal cases against doctors under Articles 109(2); 118(2); 124 of the Criminal Code of the Russian Federation shows that the reason for their commission is most often elementary negligence - "forgot", "did not take into account", "made a mistake", "mixed up". Cases of gross violations of standards and protocols of medical care are not uncommon here. Therefore, in the case of careless causing of death or serious harm to the patient's health, a doctor is criminally liable. Taking into account the peculiarity of providing medical assistance and treatment, the legislator has refused from criminal responsibility for causing light and medium gravity of harm to the patient's health through negligence.

The causes of careless crimes in the sphere of medical care are often subjective in nature - inattention, lack of proper qualifications and experience, arrogance, etc. But there are also objective reasons, which testify to the responsibility of medical institutions and officials for the untimely and inadequate provision of medical care. This is also the lack of objective medical indicators (clinical) assessment of the quality of medical care, etc. Here is an example of objective reasons: "The mortality rate from oncological diseases may increase in Russia by 20-30% if the rules for purchasing medicines do not change," said Professor Alexei Maschan, Director of the Institute of Hematology, Immunology and Cellular Technologies at Dmitry Rogachev Scientific and Research Center of Children's and Youth Sports in his interview to Izvestia. "Medicines that are needed to treat patients on a daily basis have begun to disappear. They are being replaced by generics that have not been tested in clinical trials. We often don't know what we treat patients with," complained Maschan (Interview, 2017).

The subjective side of the crimes provided for by Article 109 and Article 238 of the Criminal Code of the Russian Federation are also different. When causing death by negligence, the entire scope of a person's actions is in an unintentional plane: the person due to improper competence, fatigue of other factors does not properly perform his professional duties. When causing death in connection with the provision of services that do not meet the requirements of safety - the subject deliberately commits actions to provide unsafe services, understands the meaning of their actions and directs them, and to the consequences of death refers to the other: deliberately allows them, but does not want.

Criminal liability for non-performance or improper performance by an official of his duties because of dishonest or careless attitude to the service or duties in office, resulting in consequences in the form of death of a person, is established in Article 283 of the Criminal Code of the Russian Federation. In practice, it is often possible to find cases against doctors who provided medical assistance with consequences in the form of death under Article 293, which, in our opinion, is fundamentally erroneous. Thus, the city court of Kamen-on-Ob passed a guilty verdict under Article 293 Part 1 Criminal Code of the Russian Federation in respect of the obstetrician-gynecologist of the local hospital. The crime was committed under the following circumstances: the obstetric department of the district hospital received a 21-year-old girl at 40-41 weeks of pregnancy. The doctor appointed a medical preparation for the birth, which was planned to be carried out conservatively, that is, naturally. In violation of the requirements of industry standards of medical care, the doctor did not conduct an ultrasound examination both when the patient enters the obstetric department and in the future. In addition, the woman had obvious contraindications, but despite this, the doctor decided to continue the birth naturally, without using a Caesarean section. As a result of the doctor's improper performance of his official duties, a dead child was born (Appeal, 2019).

These actions should be qualified under Part 2 of Article 109 of the Criminal Code of the Russian Federation if the child was born alive, but with pathologies resulting from improper support of labor activity, died after separation from the mother's body. In the same case, if the child was born dead, the actions of the guilty person form the signs of the crime provided by Part 2 of Article 118 of the Criminal Code of the Russian Federation.

Mistake of qualification is explained by the following. Firstly, the crime provided for by Article 293 of the Criminal Code of the Russian Federation is referred to the category of official relations, i.e. its main direct object is public relations arising in connection with the exercise of state power, and not public relations to protect the life and health of citizens, which can only be an additional object.

Secondly, there is a special subject - an official - for this category of crimes. At the same time, such a due person in the commission of the act must perform his or her direct duties related specifically to this position. A medical worker performing a therapeutic and diagnostic function is not an official. In the same case, if the person carries out official duties, for example, is the chief doctor of the department, but causes harm acting as an ordinary doctor, that is, not performing official duties, but providing medical assistance, he is subject to liability under Article 109 or 118 of the Criminal Code.

## CONCLUSIONS

Based on the results of the research, we have concluded that the current criminal legislation allows us to respond adequately to the careless crimes of medical workers. The Criminal Code of the Russian Federation has established a system of crimes (universal compositions), which makes it possible to bring to criminal responsibility the perpetrators performing professional functions, including medical workers, whose actions or inactions have led to the most dangerous consequences, i.e. to the infliction of serious harm to health or death. The problems encountered in bringing medical personnel to criminal responsibility are not related to the insufficiency of criminal-legal protection, but to the mistakes of the law enforcer himself in interpreting the elements of the crime. Such mistakes should be eliminated not by changing the law, but by explaining on the application of crime certain elements to the Supreme Court. With regard to considered group of crimes such terms should be explained - safety of medical aid, quality of medical aid, their features, characteristics of the subject, and peculiarities of establishment of the mental element.

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