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## THE SUBJECTIVE SIDE OF THE CRIME OF PROFESSIONAL FAILURE TO PERFORM ONE'S DUTIES TO THE NECESSARY LEVEL

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**Abstract.** This article describes the concept of the crime of failure to perform one's duties properly, its specific features, and the subjective aspects of the crime. The subjective side of the crime of failure to perform one's duties is analyzed based on the opinions of experts in criminal law. The author, employing a scientific approach to the perspectives of these scholars, illuminates his views through rigorous analysis. Additionally, the article states that representatives of various professions – including doctors, rescuers, builders, hairdressers, and electricians – are considered a special subject in this context. It reveals the signs of criminal negligence that may arise from a person's actions when this crime is committed carelessly. The motives and goals underlying any activity a person consciously performs are also analyzed in relation to Article 116 of the Criminal Code, along with its specific features. The crime of improperly performing one's duties within a professional context is discussed in terms of both subjective carelessness and intent. Furthermore, the article substantiates the need to separate the crime of improperly performing one's duties from that of a medical worker into a distinct article and analyzes crime statistics related to the improper performance of duties across various professions for the years 2014-2022, as well as relevant judgments examined in connection with the research. The article also provides scientifically based conclusions and suggestions for improving legal norms that govern responsibility for the crime of improper performance of one's duties.

**Keywords:** crime, liability, victim, profession, negligence, dishonesty, carelessness, doctor, fault, duty, patient, motive, purpose, punishment, medicine.

## Introduction

Representatives of certain professions such as doctors, rescue workers, builders, hairdressers, and electricians may act negligently or dishonestly in their roles. As a result of failing to perform their duties properly, they can cause moderate or severe injury to a person's body or even death due to carelessness. This behavior undermines social relations protected by criminal law. It is worth noting that even in the first sources of law of the ancient period, punishment measures were provided for representatives of various professions for a cold-hearted approach to their duties. In our opinion, this is primarily explained by the need to ensure that every specialist in this field is entrusted with this activity and that he/she approaches this trust responsibly. It is worth noting that in ancient times, failure to properly perform one's duties related to the profession was mainly associated with the consequences of human death or injury.

In particular, the activities of doctors and builders in connection with the highest blessing for man—his life and health—were strictly controlled.

Studying the history of the development of the norms of criminal liability for improper performance of one's professional duties shows that this crime is usually closely related to the work of doctors.

In particular, the solution to the issue of the responsibility of doctors was approached somewhat differently in Ancient Egypt. The doctor had to work strictly according to the rules of the "Holy Book." If a doctor treats a patient deviating from the rules of the "Holy Book" and causes the patient's death as a result, it is considered a serious crime and brought to justice [1].

In Roman law, the concept of "medical malpractice" included inexperience, carelessness, and negligence. Roman law provided that a terminally ill patient could die. A doctor was punished like any other citizen for murder, selling poison with the intention of killing someone by poisoning,

or performing illegal abortions. Thus, the activities of doctors in Rome were subject to state regulation. In contrast, in Greece, medical care was typically provided through private agreements [2].

In the early Middle Ages, the responsibility for improper performance of one's duties related to the profession was differentiated depending on the nature of the actions of the representatives of a particular profession and the subjective attitude towards them. For example, in Palestine, a distinction was made between no aid and inadequate aid. A doctor who failed to assist individuals of free status could face execution and confiscation of property. Similarly, a doctor who caused harm to a patient through improper treatment might have their hand amputated. Comparable rules existed in Roman law, which also clearly distinguished between actions driven by intent and those resulting from carelessness [3].

In the world today, reliable protection of human life and health is essential. This includes ensuring reproductive rights, combating the spread of various infectious diseases, regulating the expansion of access to qualified medical services, and improving criminal law norms that establish liability for actions in this field.

It is crucial to focus on preventing crimes that endanger life or health, which involves criminal-legal regulation of acts deemed dangerous, the correct classification of these crimes, and the imposition of fair punishment for offenders. Additionally, determining the reasons and conditions that lead to these crimes, as well as researching new directions and prospects for prevention, has become increasingly important.

## Material and methods

Scientific methods, objectivity, systematicity, principles of determinism, the chronological method, the method of legal comparison, induction-deduction, and other scientific methods were used as part of the research.

## Research results

It should be noted that it is important to study the subjective side of the crime of failing to perform one's duties properly. The subjective aspect of this crime is characterized by negligence or dishonesty regarding one's profession, which manifests as guilt in the form of self-reliance or carelessness.

It is necessary not to ignore the fact that a person who is obliged to provide assistance to a sick person according to the law or special regulations does not provide such assistance without a valid reason, not only carelessness but also malice.

According to the fourth part of Article 21 of the Criminal Code of the Republic of Uzbekistan, if a person understands the socially dangerous nature of his act, sees its socially dangerous consequences, and consciously allows them to occur, such a crime is considered to have been committed intentionally.

At this point, a legitimate question arises as to what is the main difference between malice and negligence. "Unlike intentional crimes, crimes of only material content are committed through carelessness, that is, socially dangerous consequences are provided as a result of the actions of the guilty in the provisions of the relevant articles" [4].

At the moment, a complex issue of guilt arises under Article 116 of the Criminal Code. According to Article 23 of the Criminal Code, "If as a result of a person's intentional crime, other socially dangerous consequences have occurred behind carelessness, and such an act is associated with a stricter liability by law, such a crime is considered to have been committed intentionally".

Accordingly, in cases where the deed under Article 116 of the Criminal Code is subjectively committed with malicious intent and the criminal is careless about the consequences, the deed can be recognized as a complex culpable crime.

According to A.S. Yakubov, "determining the signs of criminal negligence in a person's act consists of the following:

- by not foreseeing the consequences of his behavior;
- with the fact that the person has an eye on the origin of these consequences, it is his duty;
- is explained by the possibility of a person to observe the origin of these consequences" [5].

The first part of Article 22 of the Criminal Code defines the types of crimes that are committed behind recklessness, that is, a socially dangerous act committed behind self-confidence or carelessness is considered as a crime committed behind recklessness. In accordance with the second part of Article 22 of the Criminal Code, if the person who committed the crime, knowing that his behavior may cause socially dangerous consequences provided for by the law, and knowingly did not follow precautionary measures, had unreasonable hope that such consequences would not occur, the crime is considered a result of self-confidence.

In accordance with the third part of Article 22 of the Criminal Code, if the person who committed the crime did not realize that his behavior could cause socially dangerous consequences provided for by the law, but it is necessary and possible to do so, such a crime is considered to have been committed through negligence. "Crimes committed behind unquestionable carelessness occur as a result of the cold attitude of individuals to their duties, indifferent attitude to social interests, etc." [6].

When serious consequences arise from the improper performance of professional duties, a particularly common form of employee guilt observed in judicial practice is criminal negligence related to one's profession.

For example, a nurse on night duty administers a large dose of painkillers and sleeping pills to a patient who has just

come out of surgery, intending to alleviate their suffering. Unfortunately, the patient dies as a result. In another instance, surgical instruments or materials may be inadvertently left inside a patient's body.

Practice shows that courts often find it challenging to determine the truth in such cases, making it difficult to prove the guilt or innocence of medical personnel. As a result, every document issued by a medical worker during the performance of their professional duties becomes extremely important. Courts tend to evaluate failures in properly documenting medical records in favor of the patient when making decisions.

In such cases, the fault of the medical worker is expressed in the fact that he did not notice that his behavior could cause socially dangerous consequences provided for by the law, but it is necessary and possible for him to notice if he performed his duties properly.

For this reason, the need to clearly and correctly understand the legal criteria that allow the doctor's actions to be characterized as a socially dangerous act worthy of punishment under criminal law is an important aspect of the activity of medical workers. Jurisprudence is based on the same legal criteria.

When a medical worker performs his professional duties, it is undoubtedly necessary for him to know the type and measure of legal responsibility for causing serious consequences provided for by the current legislation due to his failure to properly perform these duties.

#### **Analysis of research results**

In our country, the indicator of committing the crime of improperly performing one's duties in connection with the profession is as follows:

- in 2014 – 74 (108 persons);
- in 2015 – 66 (109 persons);
- in 2016 – 102 (148 persons);
- in 2017 – 88 (113 persons);
- in 2018 – 102 (145 persons);
- in 2019 – 92 (122 persons);
- in 2020 – 78 (102 persons);

- in 2021 – 67 (95 persons);
- in 2022 – 78 (104 persons);
- in 2023 – 87 (117 persons);
- in the first half of 2024 - 59 (77 persons) [7] were committed.

Practice shows that courts find it difficult to determine the truth in such cases, and it is even more difficult to prove the doctor's guilt or innocence. Because of this, every document issued by a medical worker during the performance of his professional duties is extremely important, because the failure to properly issue medical documents is evaluated by the courts in favor of the patient when issuing decisions.

Negligence, a type of fault committed behind carelessness, is somewhat similar to self-reliance. Both types of criminal negligence are characterized by the fact that, although the culprit does not see that his behavior may cause socially dangerous consequences, as provided by the law, it is necessary and possible to see.

The difference appears only when, in self-confidence, a person realizes that his behavior can lead to socially dangerous consequences, as provided by law, and because of this, he realizes that his actions are dangerous.

“In negligence, a person does not pay attention to the possibility of socially dangerous consequences; therefore, he does not realize that his actions are dangerous. Realizing that one's own behavior may cause socially dangerous consequences provided for by law is the mental aspect of self-confidence, and the unreasonable hope that such consequences will not occur without consciously observing precautionary measures is the mental aspect” [8].

This situation is explained by the fact that the actions separated from the consequences by themselves usually do not acquire criminal legal content. “At the same time, a self-confident person is always aware of the negative consequences for society that may occur

and therefore tries to prevent these consequences" [9].

Consequently, the person guilty of self-reliance understands that his actions are dangerous for society. "But self-reliance is somewhat similar to willfulness in its intellectual aspect. However, if the perpetrator of the wrongful intention is aware of the possibility of socially dangerous consequences, such a possibility in self-reliance acquires an abstract character" [10].

"Thus, the subject (a person with professional obligations) sees that such actions can lead to socially dangerous consequences, but at the same time hopes that they will not happen. He takes a light approach to the assessment of factors that, in his opinion, should prevent the occurrence of a criminal outcome. As a result, these factors will not be able to prevent the occurrence of socially dangerous consequences" [11].

"Fraudulence, the unreasonableness of the calculation aimed at preventing socially dangerous consequences, is the main sign of criminal self-reliance. Since the person forgets the dynamic role of these circumstances, firstly, he does not deviate from his goal, and secondly, he chooses socially dangerous means to achieve it" [12].

The difference between the self-confidence of the employees and the crooked intention to commit a crime is mainly determined by the content of the mental element. "If the guilty party consciously allows socially dangerous consequences to occur, the subject in self-reliance not only does not consciously allow these consequences to occur, but, on the contrary, tries to prevent them from occurring" [13].

Agreeing with this opinion, we note that, unlike perverted intention, self-confidence does not involve indifference to the negative consequences of one's actions; rather, it is focused on preventing them.

According to V.V. Chuykin, "the spiritual side of self-reliance is

described in the law as a goal, not a hope of preventing socially dangerous consequences. In this case, the guilty party relies on specific factors that, in his opinion, are capable of preventing the occurrence of a criminal result, that is, his own strength, skill, experience, the actions of other persons, mechanisms, as well as other factors, and makes an incorrect assessment of their importance, due to which the criminal result is prevented. the target to receive turns out to be unreasonable" [14].

Any goal, including one based on self-belief, is primarily a mental activity and only subsequently a spiritual one. It arises from the employee's carelessness or dishonesty regarding their profession. The connection of the rule "should be seen and possible" with the spiritual (psychological) factor should be considered as an unrealized possibility of consciousness and will. According to M.P. Karpushin and V.I. Kurlyandsky, "it is futile to search for a person's mental attitude toward the socially dangerous consequences of carelessness" [15].

When the subject of the crime of improper performance of his duties in connection with his profession works with self-confidence, only the mental aspect is the effective basis of mental attitude toward socially dangerous consequences. In relation to these consequences, the mental aspect does not apply, although the behavior of the subject itself is related to the mental, but in practice it is aimed at achieving different results.

Negligence involves not only the intention to cause socially dangerous consequences, but also the lack of awareness of their possibility; that is, neither the mental factor nor the mental factor is observed here. This means that the subject does not have an effective mental attitude to socially dangerous consequences. Such a situation can be described as the inaction of the psyche in relation to the socially dangerous but

additional consequences, because the possibility is not the reality.

The psychological mechanism of a person's behavior in negligence is almost no different from actions in other forms of guilt. Existing differences are not spiritual, but normative. It will be up to the legislator to consider what additional socially dangerous consequences are caused by negligence. According to V.V. Chuykin, "only for this reason, the mental attitude of the subject to the consequences acquires legal significance."

"The problem of criminal negligence has always been the cause of intense debate in the science of criminal law" [16].

This is not an accident; negligence lies between a crime and an accident. If the mental attitude is interpreted a little more broadly, the accident becomes a crime. Limitation of liability for negligence and the growth of damage caused to a person as a result of negligent actions encourage the expansion of criminal liability. For this reason, some authors believe that "creating the content of endangerment due to negligence" is a promising direction in criminal law."

Norms providing for criminal responsibility for improper performance of one's duties in the field of profession are not spiritual, but have a normative character; here it is recognized that a person should and is able to face the socially dangerous consequences of his actions. O.V. Leontev wrote in this regard: "Neglect, indifference, indifference indicate the existence of a certain mental attitude towards the consequences" [17].

These comments regarding a person's criminal liability for failing to fulfill their duties due to carelessness or dishonesty in their profession suggest that such actions should be excluded from the scope of punishable offenses under criminal law. Unconscious carelessness cannot be regarded as a form of guilt with criminal legal significance; it can only lead to civil or disciplinary liability.

When crimes occur due to improper performance of professional duties, a thorough analysis of the subjective side of the crime necessitates determining the motive and purpose behind the actions.

It should be noted that the motive and purpose are not considered a necessary sign of the criminal elements under analysis, but their determination in each specific case is of practical importance. They play an important role in determining the level of social danger of crime.

"The motive and purpose of the crime sometimes serve as an eye that reflects the social and moral characteristics of a person to a certain extent" [18], he wrote. Determining the nature of the motive does not affect the qualification of the crime, but it can be taken into account when determining the punishment for the crime.

In the composition of the crimes provided for in Article 116 of the Criminal Code, motives that do not have a negative character lead, because the personality of the employee whose carelessness or dishonesty in relation to his profession caused damage to the patient's health or his death is characterized by a relatively low level of antisocial tendencies.

"The criminal-legal importance of the motive and purpose of the crime has attracted the attention of many scientists" [19]. This problem is studied mainly from the point of view of qualification and separation of crimes as a subjective aspect of crime, all cases excluding social danger, analysis of stages of crime, individualization of criminal responsibility, and punishment.

For this reason, we are satisfied with the structural aspects of the subjective side of the crimes committed due to a person's failure to fulfill his professional duties, instead of the motive and purpose.

At the root of any activity that a person consciously performs, there is a motive and a purpose. They determine the content and direction of a person's actions. According to the results of the study of judicial practice materials on cases of improper

performance of one's duties in connection with the profession, it can be concluded that in 93% of the criminal cases studied in the framework of this research, in the process of providing assistance in order to achieve a socially useful result, behind the carelessness of causing damage to the health of a person or causing his death, social profit motive was applied. The consequences were unexpected for the subject.

It should be noted that it is appropriate to distinguish between improper performance of professional duties and improper performance of professional duties of a medical worker. Because, in practice, this substance is used more for medical workers. According to the results of the survey, it was found that the crimes provided for in Article 116 of the Criminal Code are mainly committed by medical personnel.

Based on this, the actions related to a person's carelessness or dishonesty in relation to his profession, which he did not perform or improperly performed his duties in relation to his profession, as a general subject, the act of a medical worker who, as a general subject, is obliged to provide assistance to the patient in accordance with the law or special regulations, is a special act in the case of failure to provide medical assistance without a valid reason. It is necessary to separate the non-fulfilment of the duties of the medical worker who is the subject.

Medical personnel are obliged to provide first aid in any case if they have the opportunity. Some literature broadly interprets this obligation and emphasizes that medical workers are obliged to provide first aid regardless of when and where they are. Article 30 of the Law of the Republic of Uzbekistan "On the Protection of Citizens' Health" stipulates the obligation of medical and pharmaceutical workers to provide urgent medical care to citizens. However, there are also those who deny this idea. In

particular, according to Yu.A. Vlasev, "This crime cannot be applied to any medical worker who was near the patient for reasons not related to his duties and did not help him." According to the author, if the doctor does not provide assistance to the patient outside of his duties, the second part of Article 116 of the Criminal Code cannot be applied to him.

In our opinion, based on the content of current legislation and the experience gained from judicial investigative practice, it is not essential whether the first aid provided by medical personnel at the scene is officially part of their duties. A medical worker is obligated to provide first aid to a patient, regardless of whether it is formally included in their responsibilities. If the failure to fulfill this obligation results in the consequences specified in Article 116 of the Criminal Code, the act is considered a crime.

Determining the motive and purpose of the criminal behavior committed as a result of a person's failure to fulfill his professional duties is important from the point of view of individualization of responsibility and, consequently, for assigning a just punishment to the guilty party. Determining the motive and purpose of the act gives the court the opportunity to determine the attitude of the subject to the performance of his professional duties, and through them to the public interests, to form an idea about the values and goals of the criminal.

This, in turn, helps to determine the exact causes of the crime and correctly illuminate the essence of the act, the level of its social danger, and the identity of the culprit. However, all this requires a thorough analysis of the individual's attitude to the socially dangerous act he is committing.

When a person commits a crime as a result of improper performance of his duties, the behavior of the subject is related to the violation of certain normative documents regulating this activity.

Nevertheless, the study of the

materials of criminal cases related to improper performance of one's duties in connection with the profession shows that this part of the subject's mental activity is not adequately covered. The occurrence of serious consequences as a result of a person's failure to properly perform his duties in the field of profession represents the integral unity of socially dangerous behavior and socially dangerous consequences that occurred as a result of it.

The above-mentioned gives the possibility to conclude that the motive of the crimes committed due to the failure of the person to fulfill his duties due to his profession represents the inner nature of the criminal behavior.

Consequently, the realization of the social danger and illegality of one's actions, the awareness of their socially dangerous consequences, and the desire or unwillingness of these consequences cannot be understood outside of the scope of the above-mentioned essence. Only by thoroughly studying the subject's true desires can one understand his true attitude toward his actions and their consequences.

Based on this, the crime of improper performance of one's duties in connection with the profession can be committed by subjective carelessness and malicious intent.

### Conclusion

Based on the analysis of the opinions of the scientists and the practical materials above, it is proposed to make the following statement on the improvement of the Criminal Law in order to comprehensively regulate the problem of improper performance of one's duties in connection with the profession and to prevent such mistakes in future activities:

### **“Article 116. Failure to properly perform one's duties in connection with the profession**

If a person's carelessness or dishonesty in relation to their profession results in the failure to fulfill or improperly fulfill their

duties, causing moderate or severe bodily injury, –

shall be punished by up to three hundred hours of compulsory community service or withholding of wages for up to two years.

If the transmission of HIV/AIDS to another person occurs as a result of the failure to perform or improper performance of professional duties, –

shall be punished by a fine from one hundred to two hundred times the base calculation amount or compulsory community service from three hundred sixty to four hundred eighty hours or withholding of wages for up to two years or imprisonment for up to five years.

If the actions specified in the first part of this article lead to the death of a person due to carelessness, –

shall be punished by restriction of liberty from two to five years or deprivation of liberty for up to five years.

Acts referred to in the first part of this article due to carelessness:

- 1) to the death of people;
- 2) if it causes other serious consequences; –

shall be punished by imprisonment for five to eight years".

It is also proposed to draft a new article in the Criminal Code:

### **“Article 116<sup>1</sup>. Inadequate performance of a medical worker's professional duties”**

If a medical worker who is obliged to provide assistance to a patient in accordance with the law or special regulations does not provide medical assistance without a valid reason, it causes moderate or severe injury to the body, –

shall be punished by a fine from one hundred to two hundred times the base calculation amount or from three hundred to three hundred sixty hours of compulsory community service or withholding of wages for up to two years.

If those activities lead to the transmission of HIV/AIDS, –

shall be punished with withholding of wages for up to three years or imprisonment for up to five years.

Acts referred to in the first and second part of this article:

1) if it is committed against a woman whose pregnancy is known to the perpetrator;

2) if it causes other serious consequences;

3) if it causes the death of a person, – shall be punished by imprisonment from five to eight years.

Implementing these suggestions will enable a comprehensive description of the crime of improperly performing one's duties in the professional field, fully demonstrating its social danger and allowing for accurate qualification of such criminal acts.

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