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Review Article

Liability of members of the medical profession for failure to render assistance to road accident victims in polish criminal law

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ABSTRACT

Introduction: In Poland the most common causes of death from several years include cardiovascular diseases, cancers and injuries, among which the most numerous are road traffic injuries. It becomes essential to have the knowledge on how to behave in case of a traffic collision. On the other hand, criminal law needs to ensure protection of human life and health from the omission of effective assistance by bystanders. A common duty to rescue and immediately notify emergency response centers is in accordance with the Act of 8 September 2006 on the State Emergency Medical Services.

Aim: The aim of this work was to present principles of criminal liability of members of the medical profession for failure to render assistance to road accident victims.

Material and methods: Legal-dogmatic interpretation of the law in force in Poland was provided through the prism of Supreme Court rulings and literature.

Discussion: In Polish criminal law there is no provision that would directly apply to criminal liability of perpetrator for omission to render emergency first aid. Any criminal liability of a person not rendering first aid is based on general principles. It may be based on two provisions of Art. 162 of the Criminal Code and Art. 93 of the Petty Offence Code.

Conclusions: Every citizen, in accordance with current law, has an obligation to assist first aid to a person in a state of imminent danger threatening the loss of life or serious bodily injury. The possibilities of derogation from the obligation to render assistance to a road accident victim are few, they comprise a closed list. Members of the medical profession (i.e. physician, nurse or paramedic) cannot refuse help to a person in a state of extreme urgency and threatening an immediate danger of loss of life and serious injury, unless rendering assistance poses a risk to health or life of their own.

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1. Introduction

In Poland the most common causes of death from several years include cardiovascular diseases, cancers and injuries, among which the most numerous are road traffic injuries.¹² In accordance with the statistics presented regularly by the General Directorate for National Roads and Motorways, in 2010 on national non-urban roads 8096 road accidents took place, 1416 persons died and 11 263 have been injured.⁴

On the other hand, according to the data made available by the National Police Headquarters, road users most often die in road accidents happening outside built-up areas, hence particularly in the location of difficult availability of professional medical assistance.¹²

An important issue is therefore to have the knowledge on how to behave in case of a traffic collision. The promptness of reaction often determines health or life of a subject. On the other hand however, criminal law needs to ensure protection of human life and health from the omission of effective assistance by bystanders.

In Polish criminal law there is no provision that would directly apply to criminal liability of perpetrator for failure to render emergency first aid. Thus, it is correct to conclude that criminal liability of a person who did not render assistance in this regard, is based on general principles.³

It may be pursuant to the two provisions in Chapter XIX of the Act of 6 June 1997 – Criminal Code,⁷ entitled: “Crimes Against Life and Health,” in Art. 162 and in Chapter XI of the Act of 20 May 1971 – Petty Offence Code,⁸ entitled: “Offences Against Security and Order in Transport,” in Art. 93.

At this point it has to be mentioned that the potential criminal liability of an untrained layman and a member of medical profession would be different.

2. Aim

The aim of this work is to present principles of criminal liability of members of the medical profession for failure to render assistance, particularly to road accident victims.

3. Material and methods

Legal-dogmatic interpretation of the law in force in Poland was provided through the prism of Supreme Court rulings and literature.

4. Discussion

4.1. Crime of failure to offer aid

It should be noted that Art. 162 § 1 of the Criminal Code defines general type of crime of failure to offer aid to a person appearing in the position of threatening an imminent danger of death or grievous bodily injury. The subject of it can be anyone being able to assist a person in danger without putting themselves or another person to the analogous danger and does not take action to assist.¹

For example, if a person is skilled to use medical equipment that is currently available and can save a life of a person, and does not do that – they commit a crime. On the other hand, a person who refrains from rescue operations for fear of real danger to their own life, e.g. fear of self-defibrillation during the use of defibrillator, does not fulfill attributes of an offense.

It should be noted that much stricter liability concerns persons with a legal duty of care (not only to victims of road accidents), even endangering themselves.⁵ Members of medical profession definitely belong to this category.

It should be noted that members of the medical profession, due to the provisions of Art. 26 of the Criminal Code cannot refer to a state of greater value to evade blame but only to illegality.

Article 162 of the Criminal Code determines an intentional crime, therefore, the perpetrator must at least be aware that someone is in danger, as defined by this provision. Criminal liability requires also the ability to assist. If there is a need of resuscitation procedures and the person present at the accident scene does not have the ability and skills to take such measures and immediately inform a competent person, has no criminal liability.

Criminal liability in accordance with Art. 162 of the Criminal Code is present despite the final outcome: whether the assisted person is saved or not. The commission of the crime is determined by the fact that the perpetrator, being aware of the danger to life of another person, behaves passively, i.e. does not take available and possible actions to repeal or at least reduce the imminent danger to the life or health of another person.¹⁶

Article 162 of the Criminal Code says that

“§ 1 Whoever does not render assistance to a person who is in a situation threatening an imminent danger of loss of life, serious bodily injury or a serious impairment thereof, when he so do without exposing himself or another person to the danger of loss of life or serious harm to health shall be subject to the penalty of deprivation of liberty for up to 3 years.”

“§ 2 Whoever does not render assistance necessitating the submission to a medical operation, or under conditions in which the prompt assistance of a responsible authority or person is possible, shall be deemed to have not committed an offense.”⁷

In accordance to this provision, every eyewitness of the accident, which is a situation of imminent danger of death or grievous bodily harm, is obliged to render assistance to the injured party. It should be also noted that inappropriate behavior of the perpetrator may not only harm the victim, but also have a serious legal consequences. It should be noted that this provision, due to its generality, does not define in detail the extent to which assistance should be provided.

For practical reasons, worth rising is the issue of necessary extent of permissible first aid that an accident witness can provide. It is therefore reasonable at this point to consider such an example. The driver and paramedic driving an ambulance are witnessing a traffic accident. They immediately call for professional help and initiate first aid. They are

aware of the fact that a professional help is expected no earlier than in half an hour, due to the distance from urban area. Are they allowed to provide first aid in the extent beyond the usually accepted in such cases and use the professional equipment, e.g. medical oxygen, stiffener flange, oropharyngeal tube or intravenous cannula?

Assuming they possess the skills necessary to perform such activities, they also know that delay until arrival of professional help might reduce victim's chances of survival.

Analyzing the instruction of Art. 162 of the Criminal Code, it should be noted that in the presented case, were the driver and paramedic aware that they possess the skills necessary to perform such activities and until arrival of professional help victim's chances of survival significantly decrease, they should initiate rescue operation to help the victim with the use of possessed equipment. Especially, if they were aware that action taken without the equipment would not reduce, and certainly not remove the state of imminent danger to the victim. Different proceeding would fulfill attributes of an offense of failure to assist according to Art. 162 § 1 of the Criminal Code, as it would be a deliberate failure to offer medical assistance to a person exposed to loss of life or severe detriment of health in case of ability to provide assistance without endangering themselves or another person to the danger of loss of life or grievous bodily harm. In accordance with Art. 9 § 1 of the Criminal Code, offense is committed with intent when the perpetrator has the will to commit it, that is when he is willing to commit or foreseeing the possibility of perpetrating it, he accepts it.¹¹

To sum up, Art. 162 of the Criminal Code does not define any specific skills required for this extent of assistance.

Another issue is to prove the presented allegations and prosecute in case the perpetrators undertake any rescue operations. As indicated above, according to the legislature adopted, the potential perpetrator may be somehow released of liability by taking rescue action.

4.2. Legislative review

From the point of judicial practice, it is reasonable to report key judgments of the Supreme Court and Appeals Courts:

1. Criminal liability pursuant to Art. 162 § 1 of the Criminal Code may be incurred by the physician only when he owes the victim no duty of care. However, if the physician in a certain case was a so-called guarantor of security of the person in distress, criminal liability should be considered in the context of Art. 160 § 2 or § 3 of the Criminal Code.¹³
2. As explained by the Supreme Court, investigating the case of a female physician who had chosen the long detour instead of crossing the bridge or the river in order to get to the person in distress, offense under Art. 162 § 1 of the Criminal Code does not consist of incorrect choice of method of offering assistance (saving life), but complete omission of this duty.^{2,14} In other words, the point is not to choose the best way to rescue the victim but to take any action to offer assistance.
3. If the physician in the specific case was a so-called guarantor of security of the person exposed to loss of life

or detriment of health, criminal liability should be considered in the context of Art. 160 § 2 or § 3 of the Criminal Code. Offense under Art. 160 § 3 of the Criminal Code is characterized by involuntarity in the sense of Art. 9 § 2 of the Criminal Code, where the perpetrator does not intend to expose a person to imminent danger of loss of life or severe detriment of health, yet they endanger the person as a result of not maintaining adequate precautions required in this circumstances. Obviously, it applies to the case when the perpetrator anticipated or objectively speaking could have anticipated this risk.¹⁵

4.3. Offence of failure to offer assistance to a road accident victim

Similar obligation to offer assistance is imposed by Art. 93 of the Penal Offence Code, which states that:

“§ 1. Vehicle driver, who participating in a traffic accident does not offer immediate assistance to the victim, shall be subject to the penalty of fine or deprivation of liberty.”

“§ 2. In the event of commission of an offense specified in § 1, the court shall impose interdiction from on driving vehicles.”⁸

It should be noted however, that the discussed provision – in contrast to the analogous offense discussed in [Section 4.1](#) – strictly relates to road users, and in case of injured parties involved in an accident. Obligation to offer assistance arises also in case there is no injured party but participant of an accident is endangered. For example: a person becomes immobilized in a crashed vehicle and cannot leave it on their own.

Assistance offered depends on skills and knowledge of the person who provides it. The extent of assistance may include controlling the bleeding, placing the victim in a recovery position or calling an ambulance. Vehicle driver who participates in a traffic accident is responsible for failure to provide assistance under Art. 93 of the Penal Offence Code only when committed act does not fulfill definition of an offense under Art. 162 of a Criminal Code, thus in case when a victim required assistance within the meaning of Art. 93 of the Penal Offence Code, but was not in a position of exposure to imminent danger of loss of life within the meaning of Art. 162 of a Criminal Code.

However, if an accident victim find themselves in a situation of imminent danger, referred to in Art. 162 of a Criminal Code, obligation to provide assistance if posed on any person (perpetrator, witness, etc.). In case a participant of a traffic accident, in which there are injured, does not stop the vehicle at the accident scene and provide assistance to the victim, may be held liable pursuant to Art. 162 § 1 of a Criminal Code or Art. 93 § 1 of the Penal Offence Code. The Act of 20 June 1997 of the Law on Road Traffic¹⁰ also imposes obligation of offering assistance. Article 44 of the Law on Road Traffic obliges vehicle driver to provide necessary assistance to accident victims and call an ambulance and police in case there are dead or injured. Article 44 paragraph 2 item 1 of the Law on Road Traffic commands to provide

accident victims immediate assistance, within the meaning of Art. 93 of the Penal Offence Code "Method and extend of assistance depends on the skills of a driver". Whereas, Art. 44 paragraph 3 of the Law on Road Traffic defines that obligation to provide assistance applies not only to the vehicle driver, but also other participants of an accident (perpetrator and victim, as well as witnesses).

4.4. The extent of assistance rendered and criminal liability of members of medical profession

General obligation to grant immediate assistance and call the emergency medical services is also pursuant to the Act of 8 September on the State Emergency Medical Service.⁹

State Emergency Medical Service System was established to provide assistance to every person in a state of imminent danger to health. Pursuant to the Art. 4 of the Act on State Emergency Medical Service (further applied to as the EMS) "whoever notices a person or persons in a life-threatening condition or is a witness to the events giving rise to such a state, as far as their ability and skills, is obliged to immediately take the measures to effectively inform the event operators statutorily established to provide assistance to persons in a life threatening condition." Article 4 of the Act on EMS poses an obligation of taking the immediate measures to inform about the event the appropriate parties (emergency services) on every person who sees or witnesses the event, in which persons in a life threatening condition are involved.

A life threatening condition was defined in Art. 3 item 8 of the Act on EMS as a state of sudden or expected in a short period of time detriment of health that might result in a severe impairment of body functions or bodily injury, or loss of life, that requires immediate medical emergency measures and treatment. Also in Art. 162 of the Criminal Code a concept of "immediate danger of loss of life or a serious bodily injury" was used, this was discussed in Section 4.1 of the very article. The extent of performance is determined by possessed knowledge and skills of the recipient of this provision and by the effect of notification of informing the appropriate parties. Knowledge and skills are associated with individual assessment and circumstances of the incident. Therefore, a physician for example, would be judged differently than a person with no basic knowledge on first aid. His behavior would be characterized by a higher degree of social harm and impose more severe penalty. This is a universal norm transformed into a legal obligation.

In the opinion of the author, Art. 4 of the Act on EMS posing an obligation of an immediate action should be considered together with Art. 162 of the Criminal Code.

Article 5 of the Act on EMS states that a person providing a qualified first aid and rendering medical rescue activities, benefits from the protection accorded in the Criminal Code to public officials. A person providing assistance may violate personal goods, other than life or health of another person, as well as property goods to the extent necessary to save the life or health of a person in sudden life threatening condition (so called state of higher value). According to the above, persons rendering assistance (non-medical personnel as well) enjoy the protection accorded to public officials pursuant to Art. 222

of the Criminal Code (whoever violates the personal inviolability of a public official, shall be subject to the penalty of deprivation of liberty from 1 month for up to 3 years).

State of higher value relates to the protection of personal goods in the form of life and health. Only the necessity of saving life and health will be an explicable reason for violating other personal and property goods of another person, such as for example freedom, inviolability, in the meaning of Art. 23 of the Act on 23 April 1964 of the Civil Code.⁶

Qualified medical first aid was defined in Art. 3 item 2 of the Act on EMS as measures taken by a paramedic against a person in a state of sudden life threatening condition. Whereas, first aid was defined in Art. 3 item 7 of the Act on EMS as a set of measures taken in order to save a person in the state of sudden life threatening condition performed by a person on the scene of event. First aid measures taken by a person present on the scene should be continued until the qualified first aid provided after the arrival of paramedic.

5. Conclusions

1. Every citizen, in accordance with the current law, is obliged to render assistance to a person in a position of imminent danger of death or grievous bodily injury.
2. Possibilities to derogate from providing assistance to an accident victim are few and comprise a closed list.
3. Medical professions (i.e. physician, nurse or paramedic) cannot refrain from rescue operations in person appearing in a position of extreme urgency and exposure to loss of life or severe detriment of health unless rendering assistance poses threat to their life and health.

Conflict of interest

None declared.

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