

# **The Criminal Offence of Failure to Provide Assistance in the Context of Healthcare**

## **Abstract**

The diploma thesis deals with the specifics of the criminal offence of failure to provide assistance which arise when the perpetrator is a healthcare worker. The thesis analyses the conditions under which the obligation to provide assistance arises from affiliation to a healthcare profession applies, and the content of this obligation. Given that the exercise of a healthcare profession is an activity significantly regulated by non-criminal regulations, the obligation in question is interpreted in the context of the entire legal order. The initial proposition is that the obligation in question is narrower than literal interpretation of criminal law provisions may imply, if interpreted in isolation. Contrary to the general assumption, both the range of persons to whom the provision applies, as well as the conditions under which the obligation arises, and quality of the required level of the assistance, are limited. In its first part, the paper first deals with the definition of key terms (with focus on the concept of a healthcare worker) and defines the basic obligations that the legal system imposes on healthcare workers. The subsequent part is devoted to explications of the criminal offence of failure to provide assistance in general; both bodies of this criminal offence are analysed and the general obligation to act is defined in contrast to the special obligation to act. The final part focuses on the problematic points that arise when the perpetrator of the criminal offence is a healthcare worker. The scope of persons (healthcare workers) to whom the obligation in question applies is defined. Further, the circumstances in which this obligation arises are examined as well as the circumstances that exclude it. The general obligation of healthcare workers to provide assistance is defined as opposed to the specific obligation. The paper assesses whether the aim to protect the life and health of the endangered person is protected by the concerned provision in all circumstances, or whether, under certain conditions, it gives way to other interests, as a result of which the obligation to provide assistance is lifted. In particular, the paper focuses on the questions of whether these conditions may be constituted by danger to the healthcare worker (i.e. interest in protecting the life and health of the healthcare worker) and refusal of assistance by the endangered person (i.e. interest in protecting the autonomy of will of this person). The work further

examines what the very content of the duty of a health worker to provide assistance is, i.e., what action must be committed in order to meet the concerned duty. At the end of the paper, the initial proposition is evaluated *de lege lata* and *de lege ferenda*.