

Circumstances excluding illegality (defences) and the practice of a medical doctor

Summary

Circumstances excluding illegality (defences), relating to specific area of healthcare, I chose in particular because it is a range of issues and problems related to life and health, as a supreme values protected by law. By definition, therefore it is a legal relations that concern each of us. Each person sometimes come to a point where, because of illness, accident or prevention, must visit a hospital and in this moment necessarily enter into the medico-legal relations. The purpose of my thesis is to analyse significant legal institute of circumstances excluding illegality (defences), which can be applied to a specific area of legislation, dealing with health. Handling this important issue cannot be separated from other medico-legal institutions and issues purely legal or purely medical. As important so I thought to outline the basic problems of such institutions as the best standards of professional societies (known also as protocols, pathways, guidelines, practice parameters, policies and procedures, bundles or consensus statements) , issues of doctor – patient relation, the concept of *lege artis*, *vitium artis*, *non lege artis*, and in the last section I tried to outline the problems associated with providing health care in the Department of Anesthesia and in the Intensive Care Units. My thesis is divided into 3 chapters, where I try to outline the essential aspects of circumstances excluding illegality (defences) that may arise in connection with providing of health care. The first chapter is devoted to domestic sources of medical law, which relate directly to the issue of physician's work and the circumstances in which is excluded the physician's unlawful conduct. The second chapter deals with the concept of circumstance excluding illegality (defence) according to criminal law. The second section of this chapter focuses on individual circumstances excluding illegality (defences) specifically to the sector of health. Aware the fact that each of the individually characterized circumstance, would be possible to write a separate monograph, is given a greater emphasis on clarifying the issue of medical intervention, acceptable risks and issue of medical experimentation. Destitution, as the most general of the circumstances excluding illegality is mentioned for completeness. About the issue of so-called informed consent has already been written successful individual thesis. For this reason and due to the limited range of my thesis, the concept of informed consent is not dealt in detail. The third chapter is devoted to the legal regulation of doctors (physicians)

profession, especially the conditions for the exercising of the medical profession and the problems that occur in the event of failure of medical treatment. In the first section of this chapter I deal with the various statutes and legislation that contain provisions to protect health workers in their profession, particularly in respect of a breach or threat to the interests that are protected by criminal law, and respect the protection of personality under the Civil Code. In the second and third section is dealt with the concept of *lege artis*, *vitium artis* and *non lege artis*. In the last section I discuss specific area of medicine called resuscitation and intensive care. The basic concept that permeates the whole issue of this thesis, is the concept of circumstances excluding illegality (defences) in the health sector. The basic source of law, which governs the legal institutions and that should be starting-point is the "new" criminal code. The „new“ legislation of circumstances excluding illegality (defences) can be assessed as successful and rewarding. As absolutely essential in view of the principle of legal certainty, consider an explicit statutory provision of the consent of the victim and the tolerable risk. *De lege ferenda* would certainly be desirable more legislatively define the term "medical intervention" and come in line with the legal opinions cited by case law concerning the concept of *lege artis* and conditions of the practice of a medical intervention. Furthermore, I consider to be necessary in the field of *de lege ferenda*, modify the conditions for practising a medical experiment with emphasis on the treatment of this issue in the law (statute) and not in a subordinate legislation. Finally, can be concluded that the issue of medical law and related medical and legal institutions is subject to a major change in the key concepts and terms of health care. These include rapid advances in medicine, in which the whole society, morals or ethics and last but not least law, sometimes is not able to respond quickly. In other fields of human activity as well as in medicine is still necessary to keep in mind that law should be an effective instrument of function relationship between doctor and patient and should not be a brake and barrier of the development of modern medicine.