Physician liability - comparison between the Croatian Criminal Code and criminal code in Slovenia

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UNIVERSITY OF ZAGREB
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Physician liability – comparison between the Croatian Criminal Code and criminal code in Slovenia

GRADUATE THESIS

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List of Abbreviations

CCC - Croatian Criminal Code
SCC - Slovenian Criminal Code
MD – Medical Doctor
Pt – patient
HKZ – Hrvatski kazneni zakon
SKZ – Slovenski kazneni zakon
KZ – kazneni zakon
aka – as known as
art – article
subart - subarticle
cc – criminal code

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Summary

Title: PHYSICIAN LIABILITY - COMPARISON BETWEEN THE CROATIAN CRIMINAL CODE AND CRIMINAL CODE IN SLOVENIA

Author: Štefan Smogavc

Physician liability laws are basic pillars of every civilized nation with organized health care. I will compare physician liability in criminal code between Slovenia and Croatia. Although countries use to have the same history and were under the same government, nowadays probably there are some differences in their new legal systems after both countries declared their independace around the same time 1991. Medicine has many different types of laws on different levels and legislative regulations and Criminal codes is only one that will be described here. In this review, I will try to represent some similarities, differences and give a clear as possible overview of what is physician criminal liability in Slovenia and Croatia in the case of CC legislation. Everyone should know most important laws, those can not be simply ignored, especially if they are concerning person's own profession. In the case of physicians, this is even more important because usually, they deal with life and death situations. In medicine, there is a lot of uncertainty. Patient has to trust the doctor and then at the same time physician takes a lot of responsibilities and risks. There are few laws in CC that are directly concerning medical liability.
For MDs forgery of medical certificates should be treated in both countries completely the same. For this offense, the physician can get imprisonment for up to three years. The same goes for unauthorized disclosure of professional secrets. The SCC offers an option of financial compensation, which CCC does not. For both countries is also the same in the case of unauthorized use of personal information. Croatia in this case also specifically emphasizes offenses against children or discriminations and therefore increases the assigned penalty. Carless treating in CCC is treated stricter than in SCC and it is a lot more defined through more paragraphs and lowers the penalties in case of negligence. In omission of medical assistance CCC is also stricter and assigns up to three years of imprisonment when comparing with SCC, which prescribes one year, but SCC, not that is just more tolerant, it also describes when the doctor is not liable for omitting emergency service. SCC better defines transplantations and unauthorized manipulation of the human genome. Slovenian law in this article also defines breach of sperm donor anonymity. In transplantation, article CCC is in generally very strict, but it also lowers the penalty in case of tissue is taken from a dead person. Dishonest practices and claims of having special knowledge and skills in some field are less strictly regulated in CCC, but both CCs are assigning higher sentences with the higher degree of damages caused by those unlawful physicians. False expert testimony is strictly regulated in both countries if the defendant was, in fact, innocent but he was found guilty after false expert testimony, the physician could get up to ten years in CCC for his illegal testimony in the same case in Slovenia up to eight years. Another article regulation that could affect physicians in CC is spread of infectious diseases which are again the same in both countries but Croatia has again bigger punishments.

Key words: Physician liability, criminal code, Croatia, Slovenia

Sažetak

Naslov: LIJEČNIČKA ODGOVORNOST - USPOREDBA KAZNENOG ZAKONA REPUBLIKE HRVATSKE I KAZNENOG ZAKONA REPUBLIKE SLOVENIJE
Autor: Štefan Smogavc

Pravni propisi koji se odnose na liječničku odgovornost temeljni su stupovi svake civilizirane nacije s organiziranom zdravstvenom skrbi. U radu će biti prikazana usporedba Kaznenih zakona Republike Slovenije i Republike Hrvatske. Iako ove dvije države imaju sličnu povijest i bile su u prošlosti pod istom Vladom, za pretpostaviti je da danas postoje razlike u njihovim novim pravnim sustavima, nakon što su se otprilike u isto vrijeme, 1991. godine, postale neovisne.

Medicinska djelatnost regulirana je brojnim pravnim propisima. Kazneni zakon je samo jedan od zakona koji regulira zdravstvenu djelatnost. U ovom će radu pokušati predstaviti neke sličnosti i razlike kaznenog zakona Republike Slovenije i Republike Hrvatske u dijelu koji se odnosi na liječničku odgovornost. Svaki bi liječnik trebao znati najvažnije zakone koji se odnose na liječničku djelatnost zbog toga što se često nalaze u situacijama u kojima donose odluke od životne važnosti. Postoji nekoliko članaka Kaznenog zakona koji se odnose na liječničko djelovanje i koji se u Kaznenom zakonu nalaze opisane u različitim skupinama kaznenih dijela i bit će pobliže navedene i opisane u nastavku teksta.

Lažno navođenje činjenica u medicinskoj dokumentaciji u obje se zemlje tretira potpuno isto. Za ovakav akt liječnik može dobiti zatvorsku kaznu do tri godine. Isto vrijedi i za neovlašteno otkrivanje profesionalne tajne. SKZ u ovom članku kaznenog zakona predviđa i mogućnost financijske naknade, dok u Hrvatskoj ta mogućnost ne postoji. Podjednaku zakonsku regulativu obje države imaju i u odnosu na članak zakona koji se odnosi na neovlašteno uporabu osobnih podataka. Ovdje treba dodati da se u Hrvatskoj u ovom slučaju posebno naglašavaju kaznena djela protiv djece ili diskriminacije i time se povećava dodijeljena kazna.

Nesavjesno liječenje u hrvatskom kaznenom zakonu tretira se strože nego u slovenskom i detaljnije je definiran kroz više stavaka, te postoji mogućnost smanjenja kazne u slučaju nemara. Kod nepružanja medicinske pomoći Hrvatski kazneni zakon također je stroži i dodjeljuje do tri godine zatvora u usporedbi sa slovenskim koji propisuje godinu dana. SKZ ne samo da je tolerantniji, već navodi i kada liječnik nije odgovoran za nepružanje hitne pomoći. SKZ bolje definira transplantaciju i neovlaštenu manipulaciju ljudskim genomom. Slovenski zakon u ovom članku također definira kršenje anonimnosti darovatelja sperme. U članku KZ koji regulira postupak transplantacije HKZ je općenito stroži, ali moguće je okrivljenom i smanjiti kaznu u slučaju ako se tkivo uzima od umrle osobe.

Neovlaštena praksa i nepriznate vještine, te drugi nepriznati oblici liječenja (alternativan medicina) manje su strogo regulirani u HKZ-u, ali oba kaznena zakona dodjeljuju više kazne s višim stupnjem oštećenja uzrokovanih tim nezakonitim liječenjem. Davanje lažnog iskaza strogo je regulirano u obje zemlje.

Ukoliko je optuženik nevin, a proglašen je krivim nakon lažnog svjedočenja (ili vještačenja), predviđena je kazna i do deset godina, a istom slučaju u Sloveniji maksimalno do osam godina.

Još jedan članak kaznenog zakona koji bi trebao biti zanimljiv liječnicima, a odnosi se na širenje infektivnih bolesti. Ovaj članak kaznenog zakona je jednak u obje zemlje, ali Hrvatska opet ima veće kazne.

Ključne riječi: liječnika odgovornost, kazneni zakon, Hrvatska, Slovenija

Introduction

Most countries in the world have some kind of the rules and codes that govern the population within that country. They are generally accepted because they are for the mutual benefit of the population. The laws are usually established by elected political institution. You can find variations in codes since different religions or cultures can influence the law differently. Doctors should be aware of the specific legislation relating to their work in their county and region according to the principle "*igonorantia iurirs nocet*". Medical professionals are usually bound by the same general laws as a population as a whole, but a lot of additional legislations concerning the profession of medicine are added. One of them is the criminal code which deals with disputes between the state and the individual. It protects the public good and in this case includes offenses against person health, safety, etc. The penalties in criminal code are usually more monetary charges but in articles concerning physician liability, loss of liberty (imprisonment), is commonly prescribed punishment (Shepherd 2003). In many cases it can be replaced by parole, works for public good or monetary fines. Beyond that, however, the most obvious difference from other legislations is that criminal prosecution in many cases poses the risk of imprisonment. Usually other sanctions can follow as removal of licence for a certain amount of time and other collateral damages. Milligan (2017). Criminal punishment for medical offence, especially negligent conduct is a growing trend in countries with western oriented economies. With all the civil liabilities and sanctions nowadays, the focus should be on rehabilitating health care providers to prevent them from repeating the same mistakes, and not just imprisoning them for unintentional errors. Heidi (2017)

I will compare physician liability in Croatian Criminal Code that was published in Narodne novine (NN 152/08, NN125/2011) and entered into force on first January 2013 and Slovenian criminal code published on first November 2008 with all its updates that are coming into force fifteen days after they are published in Uradni list Republike Slovenije. In each chapter, I will first cite an article from Croatian Criminal law and then also from Slovenian Criminal Law. At the end of each chapter, I will compare one with another and discuss similarities versus differences. I will look into 9 most relevant articles for physicians found in both criminal codes.

Medical certificate forgery

Izdavanje i uporaba neistinite liječničke ili veterinarske svjedodžbe

Članak 282.

(1)Tko u liječničku ili veterinarsku svjedodžbu unese neistinite podatke ili tko uporabi takvu svjedodžbu, kaznit će se kaznom zatvora do tri godine. Narodne novine (2011)

Izdaja in uporaba lažnega zdravniškega ali veterinarskega spričevala

255. člen

(1) Zdravnik, ki zavestno izda lažno zdravniško spričevalo ali drugo zdravniško potrdilo, se kaznuje z zaporom do treh let.

(2) Enako se kaznuje, kdor zavestno uporabi zdravniško spričevalo ali potrdilo iz prejšnjega odstavka.

(3) Veterinar, ki zavestno izda lažno veterinarsko spričevalo, se kaznuje z zaporom do enega leta.

(4) Enako kot v prejšnjem odstavku se kaznuje, kdor zavestno uporabi spričevalo iz prejšnjega odstavka. Uradni list (2008)

There are some differences that can be found if we compare 255. article from Slovenian criminal code and 282. article from Croatian criminal code. The Slovenian law is describing how vet or a medical doctor should be punished in case of medical certificate forgery. Croatian article, in this case, is shorter and more general, it specifies punishment for a medical doctor in the same way as for the person in need

for the document with the same length of imprisonment which is also up to three years. Slovenian law, on the other hand, was less strict before, the medical doctor could be charged with a maximal length of one year and abuser of the forged documents could get only a fine or imprisonment up to six months, now he is treated the same as MD who forges the documents. Even more, the most recent law is also three years of imprisonment, except some differences in lower penalties for veterinarians.

Unauthorized disclosure of professional secrets

Neovlašteno otkrivanje profesionalne tajne

Članak 145.

(1)Odvjetnik, javni bilježnik, zdravstveni radnik, psiholog, djelatnik ustanove socijalne skrbi, vjerski ispovjednik ili druga osoba koja neovlašteno otkrije podatak o osobnom ili obiteljskom životu koji joj je povjeren u obavljanju njezinog zvanja, kaznit će se kaznom zatvora do jedne godine.

(2) Nema kaznenog djela iz stavka 1. ovoga članka ako je otkrivanje tajne počinjeno u javnom interesu ili interesu druge osobe koji je pretežniji od interesa čuvanja tajne.

(3) Kazneno djelo iz stavka 1. ovoga članka progoni se po prijedlogu. Narodne novine (2011)

Neupravičena izdaja poklicne skrivnosti

142. člen

(1) Kdor neupravičeno izda skrivnost, za katero je izvedel kot zagovornik, odvetnik, zdravnik, duhovnik, socialni delavec, psiholog ali kot kakšna druga oseba pri opravljanju svojega poklica, se kaznuje z denarno kaznijo ali zaporom do enega leta.

(2) Za dejanje iz prejšnjega odstavka se ne kaznuje, kdor izda skrivnost zaradi splošne koristi ali upravičenega interesa javnosti ali zaradi koristi koga drugega, če je ta korist večja kakor ohranitev skrivnosti ali če je z zakonom določena odveza dolžnosti varovanja skrivnosti.

(3) Pregon se začne na zasebno tožbo. Uradni list (2008)

Patient privacy is one of the basic human rights. Already Hippocrates oath states how we suppose to protect patient's secrets. It is ethical and lawful obligation to protect patient's personal information (Tatjana Babć, Sunčana Roskandić, 2006). When I compare 142. article from Slovenian criminal code and 145. article from Croatian Criminal Code in reference for MD for unauthorized disclosure of professional secret, there are no major differences. One difference is that Slovenian criminal law offers the judge also an option to assign a fine instead of imprisonment. Another small difference is that SCC further explains the second sub-article in which case professional secret can be reviled and that is also in the case the law states disclosure of the professional secret.

Unauthorized use of personal data

Nedozvoljena uporaba osobnih podataka

Članak 146.

(1) Tko protivno uvjetima određenima u zakonu prikuplja, obrađuje ili koristi osobne podatke fizičkih osoba, kaznit će se kaznom zatvora do jedne godine.

(2) Tko protivno uvjetima određenima u zakonu iznosi osobne podatke iz Republike Hrvatske u svrhu daljnje obrade ili ih objavi ili na drugi način učini dostupnim drugome ili tko radnjom iz stavka 1. ovoga članka sebi ili drugome pribavi znatnu imovinsku korist ili prouzroči znatnu štetu, kaznit će se kaznom zatvora do tri godine.

(3) Kaznom iz stavka 2. ovoga članka kaznit će se tko djelo iz stavka 1. ovoga članka počini prema djetetu ili tko protivno uvjetima određenima u zakonu prikuplja, obrađuje ili koristi osobne podatke fizičkih osoba koji se odnose na rasno ili etničko podrijetlo, politička stajališta, vjerska ili druga uvjerenja, sindikalno članstvo, zdravlje ili spolni život te osobne podatke fizičkih osoba o kaznenom ili prekršajnom postupku.

(4) Ako kazneno djelo iz stavka 1. do 3. ovoga članka počini službena osoba u obavljanju službe ili odgovorna osoba u obavljanju javne ovlasti, kaznit će se kaznom zatvora od šest mjeseci do pet godina. Narodne novine (2011)

Zloraba osebnih podatkov

143. člen

(1) Kdor brez podlage v zakonu ali v osebni privolitvi posameznika, na katerega se osebni podatki nanašajo, osebne podatke, ki se obdelujejo na podlagi zakona ali osebne privolitve posameznika, posreduje v javno objavo ali jih javno objavi, se kaznuje z denarno kaznijo ali zaporom do enega leta.

(2) Enako se kaznuje, kdor vdre ali nepooblaščeno vstopi v računalniško vodeno zbirko podatkov z namenom, da bi sebi ali komu drugemu pridobil kakšen osebni podatek.

(3) Kdor na svetovnem medmrežju ali drugače javno objavi ali omogoči drugemu objavo osebnih podatkov žrtev kaznivih dejanj, žrtev kršitev pravic ali svoboščin, zaščitenih prič, ki se nahajajo v sodnih spisih sodnih postopkov, kjer po zakonu ali po odločitvi sodišča ni dovoljena prisotnost javnosti ali identifikacija žrtev ali zaščitenih prič ter osebnih zapisov o njih v zvezi s sodnim postopkom, na podlagi katerih se te osebe lahko določi ali so določljive, se kaznuje z zaporom do treh let.

(4) Kdor prevzame identiteto druge osebe ali z obdelavo njenih osebnih podatkov izkorišča njene pravice, si na njen račun pridobiva premoženjsko ali nepremoženjsko korist ali prizadene njeno osebno dostojanstvo, se kaznuje z zaporom od treh mesecev do treh let.

(5) Kdor stori dejanje iz prvega odstavka tega člena tako, da posreduje v javno objavo ali javno objavi občutljive osebne podatke, se kaznuje z zaporom do dveh let.

(6) Če stori dejanje iz prejšnjih odstavkov tega člena uradna oseba z zlorabo uradnega položaja ali uradnih pravic, se kaznuje z zaporom do petih let.

(7) Pregon iz četrtega odstavka tega člena se začne na predlog. Uradni list (2008)

When I compare articles that that talk about the unauthorized use of personal data Slovenian Criminal Code has an option of fine or imprisonment up to one year, where Croatian Criminal Code has the only option of imprisonment up to one year in the first paragraph. There are three years of penalty for publishing personal information in SCC, the same goes for CCC. More or less the same goes for other paragraphs. Croatian law specifies if a person involved is a public servant, as a physician is, the penalty can be minimum six months and maximum up to five years in comparison Slovenian law does not specify minimum penalty just maximum of five years. Slovenian law defines the same article in seven paragraphs which more or less correspond the same to only 4 paragraphs in Croatian law. Croatian law also especially emphasizes if the offense is done towards children or in the case of race, ethnicity, political orientation, religious views, unions, health, sexual life, criminal or penal procedure exposure penalty should be up to three years. SCC adds that prosecution starts with the proposal the proposal that privacy of identity has been breached.

Careless treating

Nesavjesno liječenje

Članak 181.

(1) Doktor medicine, doktor dentalne medicine ili drugi zdravstveni radnik koji obavljajući zdravstvenu djelatnost primijeni očito nepodobno sredstvo ili način liječenja ili na drugi način očito ne postupi po pravilima zdravstvene struke ili očito

nesavjesno postupa pa time prouzroči pogoršanje bolesti ili narušenje zdravlja druge osobe, kaznit će se kaznom zatvora do jedne godine.

(2) Ako je kaznenim djelom navedenim u stavku 1. ovoga članka prouzročena teška tjelesna ozljeda drugoj osobi ili je postojeća bolest znatno pogoršana, počinitelj će se kazniti kaznom zatvora do tri godine.

(3) Ako je kaznenim djelom navedenim u stavku 1. ovoga članka prouzročena osobito teška tjelesna ozljeda drugoj osobi ili je kod druge osobe došlo do prekida trudnoće, počinitelj će se kazniti kaznom zatvora od šest mjeseci do pet godina.

(4) Ako je kaznenim djelom navedenim u stavku 1. ovoga članka prouzročena smrt jedne ili više osoba, počinitelj će se kazniti kaznom zatvora od tri do dvanaest godina.

(5) Ako je kazneno djelo iz stavka 1. ovoga članka počinjeno iz nehaja, počinitelj će se kazniti kaznom zatvora do šest mjeseci.

(6) Ako je kazneno djelo iz stavka 2. ovoga članka počinjeno iz nehaja, počinitelj će se kazniti kaznom zatvora do jedne godine.

(7) Ako je kazneno djelo iz stavka 3. ovoga članka počinjeno iz nehaja, počinitelj će se kazniti kaznom zatvora do tri godine.

(8) Ako je kazneno djelo iz stavka 4. ovoga članka počinjeno iz nehaja, počinitelj će se kazniti kaznom zatvora od jedne do osam godina. Narodne novine (2011)

Malomarno zdravljenje in opravljanje zdravilske dejavnosti

179. člen

(1) Zdravnik, ki pri opravljanju zdravniške dejavnosti iz malomarnosti ravna v nasprotju s pravili zdravniške znanosti in stroke in tako povzroči, da se komu občutno poslabša zdravje, se kaznuje z zaporom do treh let.

(2) Enako se kaznuje

(a) zdravstveni delavec, ki pri svoji zdravstveni dejavnosti iz malomarnosti ravna v nasprotju s pravili stroke, pa pri tem povzroči, da se komu občutno poslabša zdravje ali

(b) zdravilec, ki pri opravljanju dovoljene zdravilske dejavnosti iz malomarnosti neustrezno izbere in uporabi zdravilski sistem ali zdravilsko metodo, pa pri tem povzroči, da se komu občutno poslabša zdravje.

(3) Če zaradi dejanja iz prvega ali drugega odstavka kdo umre, se storilec kaznuje z zaporom od enega do osmih let. (Uradni list, 2008)

Article about careless treating does not have the same titles in CCC and SCC. In CCC it is called simply careless treating in SCC it is called careless treatment and healing activities. CCC in this article mentions exactly medical doctor and other professionals which cause obviously inappropriate method or are otherwise obviously not acting in accordance with the rules of the health profession or manifestly acting in an unauthorized manner, thereby causing the deterioration of the illness or even death of another person, those shall be punished by imprisonment for a term not exceeding one year. The SCC for the same offense. prescribes imprisonment for a term not exceeding three years. The SCC gives space to the judge and is more general in this case under condition there is significate worsening of health. CCC further specifies significant worsening of the health and increases the penalty in next paragraphs in accordance with the level of disability caused by careless treatment. CCC even mentions if it comes to termination of pregnancy than the penalty is up to five years. SCC does not specify that in sub-articles. In the case of any death, SCC determines from one to eight years of imprisonment. In comparison, CCC in the same article for the same event prescribes three to twelve years of imprisonment. CCC further specifies treatment in the case of negligence for the same offenses and lowers the imprisonment accordingly. CCC in this article is more specific it also defines penalties in case of negligence. On the other hand, it does not specify healers, which Slovenian article does. SCC does mention negligence here directly in the title and also further defines it in separate articles 25 and 26 in more general manner. Cort can in both countries in some sub-articles

substitute imprisonment with works for public good, monetary penalties or conditional sentence according to relevant art. Definitions in each CC. Reguraly final judgment is followed by a civil legal proceeding for damages. This is also possible without a criminal conviction.

Omission of medical assistance

Nepružanje medicinske pomoći u hitnim stanjima

Članak 183.

Doktor medicine, doktor dentalne medicine ili drugi zdravstveni radnik koji bez odgađanja ne pruži medicinsku pomoć osobi kojoj je takva pomoć potrebna zbog opasnosti od nastupanja trajne štetne posljedice po njezino zdravlje ili za njezin život, kaznit će se kaznom zatvora do tri godine. Narodne novine (2011)

Opustitev zdravstvene pomoči

178. člen

(1) Zdravnik ali drug zdravstveni delavec, ki v nasprotju s svojo poklicno dolžnostjo ne pomaga bolniku ali komu drugemu, ki je v nevarnosti za življenje, se kaznuje z zaporom do enega leta.

(2) Dejanje iz prejšnjega odstavka ni protipravno, če zdravnik opusti določen način zdravljenja, poseg ali medicinski postopek na izrecno pisno zahtevo bolnika ali druge osebe, ki je sposobna odločati o sebi in pomoč zavrača tudi še potem, ko je poučena o nujnosti pomoči ter o mogočih posledicah zavrnitve in tudi potem, ko jo je zdravnik ponovno poskusil prepričati, naj spremeni svojo odločitev. Narodne novine (2015)

The omission of medical assistance is specified in article 183 of CCC and article 178 of SCC. Again stricter CCC assigns imprisonment up to three years if any medical personnel or any health care worker fails to act in case of medical need which may result in harmful consequences. SCC in similar article in two paragraphs assigns up to one year of imprisonment and in second paragraph specifically specifies when health care worker is not responsible for not delivering his medical skills and that is only in case when the doctor has written request from mentally capable individual for rejecting help and only after repetitive explanation to the pt about consequence which may result with omission of medical assistance and how this may be harmful to their own health and even persuading them that they should change their mind. Only then the doctor can omit his treatment, otherwise, the punishment prescribed is up to one year of imprisonment. The article does not specify if “do not help” request should be in written form.

Unauthorized removal and transplanting parts of the human body

Nedozvoljeno uzimanje i presađivanje dijelova ljudskog tijela

Članak 182.

(1) Doktor medicine, doktor dentalne medicine ili drugi zdravstveni radnik koji bez propisanog pristanka ili medicinski neopravdano uzme organ, tkivo, stanicu, zametak ili fetus živog darivatelja, ili ih presadi primatelju ili upotrijebi za postupak medicinske oplodnje, kaznit će se kaznom zatvora od jedne do deset godina.

(2) Ako je kaznenim djelom navedenim u stavku 1. ovoga članka prouzročena smrt osobe, počinitelj će se kazniti kaznom zatvora od tri do petnaest godina.

(3) Doktor medicine, doktor dentalne medicine ili drugi zdravstveni radnik koji radi presađivanja uzme dio tijela umrle osobe iako zna da je ta osoba ili njezin zakonski

zastupnik, odnosno skrbnik, za života dao pisanu izjavu o nedarivanju, ili tko bez propisanog pristanka uzme radi presađivanja dio tijela umrlog djeteta ili umrle punoljetne osobe koja nije imala sposobnost rasuđivanja, kaznit će se kaznom zatvora do jedne godine. Narodne novine (2011)

Nedovoljena presaditev delov človeškega telesa in sprememba človeškega genoma

181. člen

(1) Zdravnik, ki komu vzame del telesa zaradi presaditve ali komu presadi del telesa, čeprav je jemanje ali presaditev dela telesa po pravilih zdravniške znanosti in stroke neupravičeno, se kaznuje z zaporom od šestih mesecev do petih let.

(2) Enako se kaznuje zdravnik, ki z namenom presaditve vzame del človeškega telesa, preden je na predpisan način ugotovljena smrt.

(3) S kaznijo iz prvega odstavka se kaznuje zdravnik, ki komu protipravno odvzame spolne celice, nedovoljeno ravna z njimi ali krši anonimnost dajalca spolnih celic.

(4) Zdravnik, ki komu vzame del telesa zaradi presaditve ali presadi komu del telesa, ne da bi si poprej pridobil z zakonom predpisano privolitev dajalca in prejemnika ali njunih zakonitih zastopnikov ali kadar v nasprotju s predpisanimi postopki odvzeti del človeškega telesa hrani ali uporabi za drug namen, kot je bil odvzet, se kaznuje z zaporom od treh mesecev do petih let.

(5) Kdor poskuša ali izvede poseg, katerega namen je spremeniti človeški genom in se ne opravlja za preventivne, diagnostične ali terapevtske namene, ali je njegov cilj uvesti spremembe v genom potomcev, se kaznuje z zaporom do petih let.

(6) Enako kot v prejšnjem odstavku se kaznuje, kdor vzame ali pridobi odvzeti del človeškega telesa, za katerega darovalec prejme plačilo, kdor nezakonito razpolaga z odvzetim delom človeškega telesa, kdor uporabi ali poskusi uporabiti človeško telo ali njegove dele z namenom pridobivanja premoženjske koristi ali kdor neupravičeno

in proti plačilu posreduje pri dajanju delov telesa žive ali umrle osebe za presaditev. Uradni list (2008)

CCC article 182 determines penalty in case of unauthorized removal or transplantation of parts of the human body from one year up to ten years of imprisonment. SCC will in article 181 in the same case assign from only 6 months to five years of imprisonment. Further, in the case of death CCC will assign from three to even fifteen years of imprisonment. Legislators in Croatia considered that higher penalty is needed here because the perpetrator is a doctor or healthcare worker (Turković, Novoselec, Grozdanič at al 2013). In another paragraph of CCC of the same article of Croatian law is defined that in the case of harvesting from death person, who wrote specific request against donations or was unable of proper reasoning, then, in this case, CCC law assigns only one year of imprisonment. Croatian law is, in this case, more specific. SCC in general mentions if the offense is not in accordance with medical science and health care profession leaving more space for interpretation. Slovenian law further defines the same penalty before patient's death was definitive. The defendant is also responsible to the same extent if he did not provide anonymity for sperm cell donor, takes his sperm cells against his will or uses them unauthorized. Slovenian law defines that for any donation there has to be authorized by the donor or their legal representatives and donated organs can not be used for other purposes and can not be used contrary to the prescribed procedures. SCC also defines in this article unauthorized change of human genome. If not for purposes of preventive, therapeutic or diagnostic purposes but in case that the only goal is the change in the genome of offspring penalty is up to five years. The same penalty goes for those who want unlawfully gain capital gain from human transplantation surpassing the rules of medical professionalism and medical rules in soul purpose of capital gain. Slovenian article also mentions genome misuse. There are other laws and European directives that regulate human transplant more specifically.

Quackery

Nadriliječništvo

Članak 184.

(1) Tko se nemajući propisanu stručnu spremu bavi liječenjem ili pružanjem druge medicinske pomoći, kaznit će se kaznom zatvora do jedne godine.

(2) Ako je djelom iz stavka 1. ovoga članka izazvana teška tjelesna ozljeda ili znatno pogoršanje bolesti, počinitelj će se kazniti kaznom zatvora od šest mjeseci do pet godina.

(3) Ako je djelom iz stavka 1. ovoga članka kod druge osobe izazvana osobito teška tjelesna ozljeda ili prekid trudnoće, počinitelj će se kazniti kaznom zatvora od jedne do deset godina.

(4) Ako je djelom iz stavka 1. ovoga članka prouzročena smrt jedne ili više osoba, počinitelj će se kazniti kaznom zatvora od tri do petnaest godina.

(5) Sredstva upotrijebljena za liječenje iz stavka 1. ovoga članka će se oduzeti. Narodne novine (2011)

Mazaštvo

180. člen

(1) Kdor se ukvarja z zdravljenjem ali opravljanjem zdravilske dejavnosti, čeprav nima predpisane kvalifikacije, in pri tem odvrne bolnika od pravočasnega iskanja zdravniške pomoči, se kaznuje z zaporom od šestih mesecev do petih let.

(2) Storilec dejanja iz prejšnjega odstavka, ki povzroči pomembno škodo na zdravju osebe, ki v postopke zdravljenja ni privolila ali ni bila sposobna privoliti, se kaznuje z zaporom od šestih mesecev do osmih let.

(3) Če ima dejanje iz prvega odstavka za posledico smrt bolnika, se storilec kaznuje z zaporom od enega do desetih let.

(4) Pripomočki, namenjeni ali uporabljeni za zdravljenje po prvem odstavku tega člena, se odvzamejo. Uradni list (2008)

CCC in the first paragraph of 184 article explains that if someone is involved in healing but is not officially certified he should be punished with imprisonment up to one year. Then in the second paragraph continues that if major physical disability or worsening of health care is caused after the first paragraph is violated punishment should be from 6 months of imprisonment up to five years. SCC in article 180 does not, in general, punishes people who are dealing with alternative healing. It assigns penalties for those who delay official health care treatment and punishes them from six months to five years. Croatian law than further prosecuted if there was termination of pregnancy or especially severe injuries with unlawful treatment, the perpetrator, in this case, is assigned from one year to ten years. Fourth paragraph further predicates in a case of one or more death events that are following violation from the first paragraph. In this case, CCC assigns from three to fifteen years of imprisonment. SCC does not mention pregnancy termination. In the second paragraph just defines penalty if the person being healed did not give consent and in this case increase the maximum penalty from five to eight years. In the case of a person being treated dies penalty is ten years. Both laws define in the last paragraph that devices intended or used for the treatment from the first paragraph of this article shall be taken.

Giving fals expert testimony

Davanje lažnog iskaza

Članak 305.

(1) Svjedok, vještak, prevoditelj ili tumač koji u prethodnom kaznenom postupku, u postupku pred sudom, međunarodnim sudom čiju sudbenost Republika Hrvatska prihvaća, arbitražom, u prekršajnom postupku, upravnom postupku, postupku pred javnim bilježnikom ili stegovnom postupku dade lažni iskaz, nalaz ili mišljenje ili nešto lažno prevede,kaznit će se kaznom zatvora od šest mjeseci do pet godina.

(2) Kaznom iz stavka 1. ovoga članka kaznit će se stranka u postupku, osim okrivljenika, koja dade lažni iskaz ako se na tom iskazu temelji konačna odluka u tom postupku.

(3) Ako je kaznenim djelom iz stavka 1. i 2. ovoga članka prouzročena osuda nedužnog okrivljenika ili druge osobito teške posljedice za okrivljenika,
počinitelj će se kazniti kaznom zatvora od jedne do deset godina.

(4) Ako počinitelj kaznenog djela iz stavka 1. ovoga članka dobrovoljno opozove svoj iskaz prije donošenja konačne odluke, može se osloboditi kazne.Narodne novine (2011)

Kriva izpovedba

284. člen

(1) Priča, izvedenec, cenilec, prevajalec ali tolmač, ki pred sodiščem, v postopku o prekršku, parlamentarne preiskave, za ugotavljanje kršitev delovnih obveznosti ali drugih kršitev delovne discipline, v drugem disciplinskem ali upravnem postopku po krivem izpove, izvedenec ali cenilec, ki da lažno pisno mnenje, ali prevajalec, ki da lažni pisni prevod, se kaznuje z zaporom do treh let.

(2) Enako se kaznuje stranka, ki je pri dokazovanju z zaslišanjem strank v pravdnem, nepravdnem, izvršilnem ali upravnem postopku po krivem izpovedala, in je sodišče ali drug pristojni organ na to izpovedbo oprlo svojo odločbo v tem postopku.

(3) Za krivo izpovedbo v kazenskem postopku se storilec kaznuje z zaporom do petih let.

(4) Če ima dejanje iz prejšnjega odstavka posebno hude posledice za obdolženca, se storilec kaznuje z zaporom od enega do osmih let.

(5) Če storilec prostovoljno prekliče svojo krivo izpovedbo, preden se izda dokončna odločba, se kaznuje z denarno kaznijo, sme pa se mu tudi odpustiti kazen. Uradni list (2008)

Both articles are more or less similar. Only in the first paragraph of CCC says that any expert testimony in front of a court, arbiter or international court but CCC emphasizes that those courts have to be recognized by the Republic of Croatia. SCC does not talk about courts recognition by the Republic of Slovenia. CCC also mentions if the expert gives the wrong statement, finding or opinion he will be assigned penalty. SCC mentions specifically only written the opinion and in this case, the penalty is up to three years. In CCC is from six months up to five years. Then in the second paragraph of SCC, they also add verbal statement and the penalty is the same as in the first paragraph and in the third paragraph of this article, SCC adds that in the case of criminal procedures false statement is given that penalty increases up to five years. In last two paragraphs, both articles emphasize if there are heavier consequences for accused than in CCC penalty is up to ten years and in SCC is only eight. In both last paragraphs if experts retract false testimony before the final decision is reached both CC can cancel penalty or in SCC just a fine is another option.

Spreading and transmitting infectious diseases

Širenje i prenošenje zarazne bolesti

Članak 180.

(1) Tko ne postupi po propisima ili naredbama kojima nadležno državno tijelo naređuje preglede, dezinfekciju, dezinsekciju, deratizaciju, odvajanje bolesnika ili drugu mjeru za sprečavanje i suzbijanje zarazne bolesti među ljudima, odnosno za sprječavanje i suzbijanje zarazne bolesti životinja od kojih mogu oboljeti i ljudi, pa zbog toga dođe do opasnosti od širenja zarazne bolesti među ljudima ili prenošenja zarazne bolesti sa životinja na ljude, kaznit će se kaznom zatvora do dvije godine.

(2) Tko ne pridržavajući se mjera zaštite drugoga zarazi opasnom zaraznom bolešću, kaznit će se kaznom zatvora do tri godine.

(3) Ako je kazneno djelo iz stavka 1. i 2. ovoga članka počinjeno iz nehaja, počinitelj će se kazniti kaznom zatvora do jedne godine.

(4) Kazneno djelo iz stavka 2. ovoga članka kad se radi o spolno prenosivoj bolesti progoni se po prijedlogu oštećenika, osim ako je kazneno djelo počinjeno na štetu djeteta. Narodne novine (2011)

Prenašanje nalezljivih bolezni

177. člen

(1) Kdor se ne ravna po predpisih ali odredbah, s katerimi pristojni organ odredi pregled, razkuženje, izločitev bolnikov ali kakšne druge ukrepe za zatiranje ali

preprečevanje nalezljivih bolezni pri ljudeh in s tem povzroči, da se nalezljiva bolezen razširi, se kaznuje z denarno kaznijo ali zaporom do enega leta.

(2) Enako se kaznuje, kdor se ne ravna po predpisih ali odredbah, s katerimi pristojni organi določijo ukrepe za zatiranje ali preprečevanje kužnih bolezni pri živalih, ki se lahko prenesejo na ljudi, in s tem povzroči, da se kužna bolezen prenese na ljudi.

(3) Kdor stori dejanje iz prvega ali drugega odstavka tega člena iz malomarnosti, se kaznuje z denarno kaznijo ali zaporom do šestih mesecev.

(4) Če ima dejanje iz prvega, drugega ali tretjega odstavka tega člena za posledico smrt ene ali več oseb, se storilec kaznuje za dejanje iz prvega ali drugega odstavka z zaporom do osmih let, za dejanja iz tretjega odstavka pa z zaporom do petih let. Uradni list (2008)

Both CC assign the same rules in article 180 of CCC and a. 177 of SCC. The only difference is that they divide same rules into different paragraphs. SCC prescribes lower penalties for the same offenses. CCC for the offense of spreading and transmission of contagious diseases prescribes up to two years of imprisonment in contrary to SCC which prescribes a monetary fine or up to one year of imprisonment. In the case of negligence punishment is even lower, in CCC up to one year in prison and in SCC from just a fine up to six months in jail. Last paragraphs are different. CCC assigns that in the case of sexually transmitted disease punishment is being regulated in accordance with the prosecutor, unless the child is affected. It does not further specify what in the case of a child. SCC does not mention this. SCC mentions death or more deaths as a consequence of spreading the disease than punishment is imprisonment up to eight years, in a case of negligence is reduced to five years. CCC does not mention this.

Conclusion

Like I predicted in the begging overall pattern is very similar between CCC and SCC since countries had a common history and they are from the same religious views and similar culture. Not even more indivudal laws like for example about abortions are not of many difference in this two countries. In many cases CCC penalties for the same corresponding offense to SCC are bigger, imprisonment is longer than in SCC for the same relevant article. Articles concerning the same offences are structured more or less in a similar way, the only difference is the number of paragraphs on which law is defined, but the content has more or less the same message. Critical components of the law concerning physician liability are in the most cases the complementary.

Medical liability is physician mistake, incorrect or incomplete diagnosis or treatment which caused the patient more injury or even death. Our laws originate from continental law from the Napoleonic era, the patient has to prove that he was harmed and has to convince the court that doctor breached his duty of care by committing an error whether by ignorance or negligence or any other unlawful act in above-mentioned articles. On the other hand, he also has to prove that there was obvious damage done to his life or that events lead to worsening of his previous condition. Without damage, there is really no basis for a claim regardless of a doctor's negligence. Meanwhile, the doctor defence should prove that harm was done by external reason beyond his control or patient itself. Court decides which is more credible. The Physician should always follow standard medical rules and procedures, document patient's medical history properly and even his family history before diagnosing and treating him. They should follow excepted medical protocols defined by standard medical practice. Doctors should prescribe appropriate medicine in proper dosage and always warn about side effects of treatment and complications. They should inform the patient about nature of his illness. Doctors should not treat without pts approval and especially in nonemergency cases. They should not use unauthorized illegal methods which lead to worsening of the symptoms. Also, they can not do unauthorized transplantations, clone human beings, disclose the patient confidential information. Forge official medical documentation or give false expert testimony. The Doctor can not refuse patient in emergent need of medical service.

Medicine is evolving quickly every day; we expect that new regulations will be needed as soon as possible otherwise legal emptiness could have the negative influence on developing societies.

In both CC nothing is really directly said about stopping the patient's life but it is indirectly defined under section ten of CCC which talks about integrity of life and body. There is also nothing in CC about illegal abortions specifically. Again this is indirectly defined under sections about human rights and their security. Probably this is where is still space for new additional legislation. Afterall by joining the European legislation we can expect to add some more similar general laws in future.

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Biography

Štefan Smogavc was born in Maribor, Slovenia in 1987. After his primary education in his hometown, he enrolled classic Gymnasium high school in Maribor. He was always very active throughout education and showed interest in emergency medicine very early. He developed that after his father who was working at the hospital took him there on multiple occasions. During his childhood, he would also visit Croatian coast every summer with his parents. In Croatia at University of Zagreb new international Medical school was started. It was the closest Medical School with the program in English. He is studying there currently and Zagreb has a special place in his youth.

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