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MEDICAL PROFESSION: PROBLEMS OF DETERMINATION OF CIRCUMSTANCES WHICH EXCLUDE CRIMINAL ACT

Practical activities in medicine often affect the human body in such way that it is possible to regard it to be the trespass of the patient's physical inviolability, i.e. his health. Thus, determination of justification of medical staff actions in case of rendering medical help is urgent. It provides application of rules of institution of circumstances, which exclude maleficence of criminal intent. As provided by Criminal Code of Ukraine, the same circumstances in the area of medical profession are the following: a valid reason by which medical person is not able to perform his professional charge (article 139 of Criminal Code of Ukraine law), consent of the patient or his representative (agent) (article 141 of CC of Ukraine), act connected with risk (article 42), extreme necessity (article 39), circumstances provided for

by law of Ukraine «On Transplantation of Organs and Other Anatomical Materials to Humans». In medical profession, danger of trespass for person is typical. At that, medical activity is socially approved, and provided by law (i.e. lawful). Thus, exercise of professional functions by medical personnel is the key circumstance, which determines legality of his actions and excludes illegality and social danger. So, legality of trespass in medical activity is necessary to be determined by legislative regulations of health protection and other enactments, which regulate rights and duties and professional activity of medical personnel.

Ukrainian legislation considers execution of euthanasia by medical person as a crime against life and it cannot be specified as a circumstance excluding criminal act.