

CRIMINAL ACTS INVOLVING FAILURE TO ACT PURSUANT TO HEALTH REGULATIONS DURING AN EPIDEMIC AND TRANSMISSION OF CONTAGIOUS DISEASES

Summary: In addition to massive implications for the health and business segments, the COVID-19 pandemic has also led to a high increase in public attention towards criminal acts that sanction the spread of infectious diseases. These criminal acts occupied a marginal position among the professionals public and scholars dealing with crime and criminal activity, until the outbreak of the pandemic. Thus, the effects of the COVID-19 pandemic, among other things, contributed to the fact that the two criminal acts in question, which were, until recently, practically invisible, move to the center of attention of the scientific and professional public. Undeniably human health is one of the most important segments protected by criminal law. The pandemic and its consequences represent a considerable challenge not only in terms of timely adaptation of the health system, but also in the functioning of the socio-economic segment of society, given that the consequences of COVID-19 occur quickly and have long-term implications in an economic and social sense, but also the legislative sense because it is precisely the segment of adopting new and/or updating existing laws and bylaws that must follow current social events. Keeping that in mind, solutions presented in criminal law are especially important. The paper analyzes the general impact of the COVID-19 pandemic on all vital aspects of the society, after which attention is focused on the analysis of the criminal treatment of actions that primarily consist of failure to act pursuant to health regulations during an epidemic and transmission of contagious diseases

Key words: COVID-19, Criminal Code, Failure to Act Pursuant to Health Regulations during an Epidemic, Transmission of Contagious Diseases

Introduction

The Covid-19 disease pandemic has extremely invasively affected all aspects of human life and activity across the world. The pandemic caused by the Covid-19

* jelena@pravni-fakultet.info

** jdragojlovic@pravni-fakultet.info

virus and all the measures applied in response to it, both in the entire world as well as in Serbia, have an extremely strong effect on many aspects of everyday life. According to the data provided by the World Health Organization - WHO, the first registered case in the world was recorded in China, on January 7, 2020¹, the first registered case in Europe was recorded in France, 24.01.2020², and the WHO declared a pandemic on March 11, 2020.³

In addition to numerous implications in the health and commercial segments, the Covid-19 pandemic also influenced the fact that two criminal acts received heightened attention from the scientific and professional public, which until the outbreak of the pandemic occupied marginal positions in the scientific community. Specifically, in the Criminal Code⁴ in the chapter dealing with criminal offenses against human health (Chapter XXIII), the legislator established two criminal offenses concerning this area. These are Failure to Act Pursuant to Health Regulations During Epidemic (Article 248 of the Criminal Code) and Transmitting Contagious Disease (Article 249 of the Criminal Code).

In the continuation of the paper, we will explore more details about the general impact of the Covid-19 pandemic on all vital aspects of society, after which attention will be focused on the analysis of the criminal treatment of actions that primarily consist of failure to act pursuant to health regulations during an epidemic and transmitting contagious disease.

The Impact of Covid-19 on Vital Aspects of Society

According to the estimates of the Global Health Security Index (GHS Index), the countries of the Western Balkans were essentially well ranked on the international list of preparedness to respond to a pandemic, at the very beginning of the spread of Covid-19.⁵ The criteria used for these assessments were primarily the readiness of the state's health system to prevent and detect sources of infection, respond quickly to current challenges, and respect international standards. It should be noted that the Global Health Security Index is the first comprehensive assessment of global health care potential in 195 countries.⁶ A conclusion that imposes itself, after

¹ World Health Organization (2020). Coronavirus disease (COVID-19) outbreak, <http://www.euro.who.int/en/health-topics/health-emergencies/coronavirus-covid-19/novel-coronavirus-2019-ncov> (07.07.2020.).

² World Health Organization (2020). 2019-nCoV outbreak: first cases confirmed in Europe, <http://www.euro.who.int/en/health-topics/health-emergencies/coronavirus-covid-19/news/news/2020/01/2019-ncovoutbreak-first-cases-confirmed-in-europe> (07.07.2020.).

³ World Health Organization (2020). Health emergencies, <http://www.euro.who.int/en/health-topics/healthemergencies> (07.07.2020.).

⁴ Criminal Code, Official Gazette of RS, no. 85/2005, 88/2005 – corr., 107/2005 – corr., 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016 and 35/2019.

⁵ GHS Index, <https://www.ghsindex.org/> (01.07.2020.).

⁶ A total of 140 questions from the Global Health Security Index are organized into six categories: prevention (prevention of pathogen emergence or release), detection and reporting (early detection and reporting of epidemics of potential international importance), rapid response (rapid response and miti-

taking into account the previous experiences with health systems from the Western Balkans and their relation to the effects of the Covid-19 pandemic, is that special attention should be paid especially to the following:

- Funding should be allocated to responding to pandemics and public health systems in order to stop disease transmission.
- Recognizing the impact of deep recessions on budgets and fiscal space for health and its management.
- Minimize financial risk for patients in need of health care to protect vulnerable patients.
- Ensure continuity of service delivery and explore opportunities for sustainable innovation.
- Direct recovery efforts to a level considered a new normal.⁷

Furthermore, the pandemic and its consequences represent a substantial challenge, not only in terms of timely adaptation of the health system but also in the socio-economic aspect of society, bearing in mind that the consequences of Covid-19 occur quickly and have a long-term consequence in both economic and social sense. Consequently, the pandemic has caused serious global socio-economic, political, and security issues, including the greatest global recession since the Great Depression. This has led to the postponement or cancellation of sporting, religious, political, and cultural events, a widespread supply shortage exacerbated by panic shopping, but also reduced greenhouse gas and pollutant emissions. Schools, universities, and colleges were closed on a national or local basis in 194 countries, affecting about 98.5% of the world's student population. All sports competitions have been brought to a halt, the Olympic Games and several continental sports championships have been postponed.⁸ In Serbia, the pandemic itself and the measures taken by the Government in response to it, had a strong effect on the economy, functioning of institutions, the availability of public and social services, but also on the daily life of the population.

According to a UNICEF study, “the socio-economic impact of Covid-19 will be felt most by those already at risk. Many are already living in poverty, and the consequences of response measures to Covid-19 run the risk of further worsening their situation.”⁹ Certainly, one of the most sensitive existential issues is the impact of the Covid-19 pandemic on job loss. According to a study prepared by SeCons & Friedrich Ebert Stiftung, “in April 2020, 8% of people lost their jobs who were previously employed in February 2020 in the non-agricultural sector. When this per-

gation of the epidemic), health system (sufficient and solid health system for treatment of the sick and protection of health workers), respect for international norms (commitment to improving national capacities, financing plans for elimination of deficiencies and adherence to global norms), risk environment (general risk environment and vulnerability of the country to biological threats). Source: GHS Index, <https://www.ghsindex.org/> (01.07.2020.).

⁷ World Bank Group (2020). *Ekonomski i socijalni uticaj Covid-19 – zdravstveni sistemi, Redovni ekonomski izveštaj za Zapadni Balkan*, br. 17, p. 8-12.

⁸ Željko Bjelajac, Aleksandar Filipović (2020) Lack of Security Culture in Facing the COVID-19 Pandemic. *The Culture of Polis*, XVII (2020), No. 42, pp. 383-399.

⁹ UNICEF (2020). UNICEF-ov odgovor na pandemiju Covid-19 u Srbiji, UNICEF Srbija, Beograd, str. 6.

centage is projected on the total population, it amounts to about 200,000 people who lost their jobs after the introduction of the state of emergency, including informally employed."¹⁰ The role of the media should not be neglected, which is crucial in the suppression of criminal acts, and thus in the promotion of security culture as a preventive action in situations that are a challenge, risk, or threat. Even before the pandemic, and especially during it, a permanent emanation of an incredible amount of incorrect information was perpetuated by the media.¹¹ The pandemic only expanded and multiplied this harmful effect, which led to serious disorders, both in communication and in trust in the accuracy of the information provided by the media.

In addition to some summary reviews made in the analysis of the impact of the Covid-19 pandemic on the health systems of Serbia and the Western Balkans, and the impact of the pandemic on socio-economic aspects in Serbia, the issue of legal (in this case criminal) response is important. Especially, to certain actions in this area that can cause substantial harmful consequences in periods when (as is now the case) an epidemic and / or even a pandemic of a certain infectious disease has been declared. It is important to mention that the timely reaction of the state in sanctioning certain activities is in a direct correlation with both health and socio-economic factors.

Criminal Acts of Failure to Act Pursuant to Health Regulations During Epidemic and Transmitting Contagious Disease

The effects of the Covid-19 pandemic, among other things, contributed to the fact that the two criminal acts, which were in fact until recently invisible, came to the center of attention of the scientific and professional public. These are Failure to Act Pursuant to Health Regulations During Epidemic (Article 248 of the Criminal Code) and Transmitting Contagious Disease (Article 249 of the Criminal Code). Both crimes belong to the twenty-third chapter of the Criminal Code, titled Offences Against Human Health.

Human health is one of the most important group protections in criminal law.¹² At the same time, it should be emphasized that human health in this context does not imply the health of the individual, as an individual value that belongs to each person, but health as a general, common value of all people.¹³ The criminal offense of Failure to Act Pursuant to Health Regulations During Epidemic is committed by a person who, during an epidemic, does not act in accordance with regulations, decisions, or orders which determine measures for its suppression or prevention. The penalty for this act is a fine or imprisonment for up to three years.

¹⁰ Grupa autora (2020). Covid-19 i zaposlenost u Srbiji: uticaj pandemije i mera za njeno sprečavanje na zaposlenost i uslove rada, SeCons – development initiative group, Friedrich Ebert Stiftung, p. 10.

¹¹ Bjelajac, Ž., Filipović, A., (2020): Uticaj masovnih medija na degradaciju savremenog društva, in: Uticaj masovnih medija na degradaciju savremenog društva, Željko Bjelajac i Aleksandar Filipović (eds.), , Kultura polisa, vol. 17, posebno izdanje, p. 9-21.

¹² Stojanović, Z. (2019). Komentar Krivičnog zakonika, Službeni glasnik, Beograd, p. 809.

¹³ Babić, M. (2008). Krivično pravo – opšti i posebni deo. Pravni fakultet Univerziteta u Banja Luci, Banja Luka, p. 264

Therefore, the act of committing a said crime consists of failing to comply with health regulations, decisions, or orders during an epidemic of some of the dangerous infectious diseases. Health regulations, decisions, or orders encompass measures for its suppression or prevention. According to Stojanović, "this is a real criminal act of negligence, although inaction can be manifested in acts of doing the opposite of what should have been done."¹⁴ This criminal act is defined with an open norm, where it is specified for the actions to be considered criminal the disease in question has to be a dangerous infectious disease that is specifically assessed following the possibilities of its spread and transmission.

It is further stated that "failure to act must exist during an epidemic of a dangerous infectious disease." An epidemic of an infectious disease is considered to be an increase in infectious diseases unusual in the number of cases, time, place, or affected population, as well as an unusual increase in the number of diseases with complications or death."¹⁵ Therefore, in order for criminal action to exist the disease must be classified as a dangerous infectious disease, and what is a dangerous infectious disease is a factual issue that is determined in each case, and the criteria for determining whether it is a dangerous infectious disease are the possibility and speed of its spread, mortality rate and complications that occur for patients, etc.

The Law on the Protection of the Population from Infectious Diseases¹⁶ was amended after the expansion of COVID-19. The law regulates the protection of the population from infectious diseases and several special health issues, determines infectious diseases that endanger the health of the population of the Republic of Serbia and whose prevention and suppression is of general interest to the Republic of Serbia, implementation of epidemiological surveillance and measures, Their implementation and financing and supervision over the implementation of this law, as well as other issues of importance for the protection of the population from infectious diseases.

Article 3, paragraph 1 of the Law stipulates that the protection of the population from infectious diseases encompasses the organized overall activities of society with the aim of preventing and combating infectious diseases, as well as their suppression and eradication. Article 4 of the Law stipulates that infectious diseases include: diseases that lead or may lead to significant illness and / or death, especially those whose prevention requires broader coordination of activities; diseases where the exchange of information can provide early warning for threats to public health; rare and serious infectious diseases, which are not present in the Republic of Serbia, and for which grouping of data may indicate the factors responsible for their occurrence; diseases for which there are effective prevention measures for the benefit of the population; diseases in which comparing the frequency of their occurrence in other environments can contribute to the assessment and improvement of protection programs for the population.

¹⁴ Stojanović, Z. (2019), op. cit., p. 832.

¹⁵ Ibid., p. 833.

¹⁶ Law on Protection of the Population from Infectious Diseases, Official Gazette of RS, no. 15/2016 and 68/2020.

The law prescribes the rights, obligations, and competencies in the implementation of protection mechanisms from infectious diseases, as well as measures for the protection of the population from infectious diseases and the manner of their implementation. In that sense, Article 14 prescribes that measures for the protection of the population from infectious diseases represent a set of all activities planned, organized, and implemented by the bodies of the Republic of Serbia, autonomous provinces, local self-government units, economic entities, and legal entities, institutes, and institutes for public health and other health care institutions, health workers and health associates and natural persons to protect the population from infectious diseases. Protection of the population from infectious diseases is carried out by implementing general, special, extraordinary, and other measures for the protection of the population from infectious diseases.

The consequences of the criminal act of failure to comply with health regulations during an epidemic consist of an abstract danger to human health and their lives. As for the culpability, this criminal act implies the intent of the perpetrator. Stojanovic also states that "the possibility of real misconceptions regarding important features, such as the nature of epidemics and dangerous infectious diseases, as a rule, excludes decisions and orders of competent bodies declaring an epidemic and imposing certain measures to prevent and suppress certain infectious diseases."¹⁷ In addition to the criminal offense under Article 248 of the Criminal Code, Article 249 of the Criminal Code prescribes the criminal offense of Transmitting Contagious Disease, which will be discussed in more detail further in the text.

The criminal act of Transmitting Contagious Disease is committed by whoever fails to act pursuant to regulations, decisions, or orders for suppression or prevention of contagious disease, and thereby a contagious disease is transmitted. This criminal act is punishable by a prison sentence of up to three years.

This criminal act belongs to the group of those crimes for which it can be rightly said that not knowing the law is harmful (*ignorantia iuris nocet*). This statement stems from the fact that in situations when the existence of a contagious disease is registered, there are usually several laws and bylaws that citizens should be informed about, to properly and purposefully prevent further transmission of a contagious disease. Therefore, a large number of legal acts adopted and applied precisely to prevent further spread of the infection are very often a precursor to committing a crime like this, because often citizens are not familiar with legal regulations, and in such situations are not aware of the consequences of their actions. Therefore, this criminal activity exists when there is a failure to comply with regulations, decisions, or orders for the suppression or prevention of infectious diseases, or in the omission of measures required by the current legal regulations adopted to prevent further spread of infectious diseases.

An important condition for the existence of this criminal act is that due to failure to comply with regulations, decisions, or orders for the suppression or prevention of infectious diseases, the transmission of a contagious disease did occur. In that sense, Stojanović states that "for the notion of transmission, it is enough that due to

¹⁷ Stojanović, Z. (2019), *op. cit.*, p. 833.

failure to take the necessary action just one person got infected with a contagious disease. It is debatable whether this is a consequence of an objective condition for incrimination and whether, concerning that circumstance, the intent is required or not. There are arguments for both opinions. Starting from the general approach based on the principle of culpability and subjective responsibility, that a circumstance should not be considered an objective condition of incrimination if it is possible to consider it an essential feature of the nature of the crime, without changing the character of the crime, then we could consider it a consequence."¹⁸ As for the form of culpability, this crime can be committed only with intent, provided that the perpetrator is aware that he has contracted a contagious disease and that his actions are contrary to the existing regulations. Committing this criminal act due to negligence entails misdemeanor liability.

The perpetrator of this criminal act can, in principle, be anyone, but over time, the reality has shown that the most frequent perpetrators of these crimes are doctors, nurses, other medical staff, as well as family members of the infected person.

However, it should be noted that Article 259 of the Criminal Code (Grave Offences against Health) in paragraphs 1 and 2 prescribes that "if due to the criminal act of Transmitting Contagious Disease a person sustains grievous bodily harm or serious health impairment, the offender shall be punished by imprisonment of one to eight years", and that if the same crime "results in the death of one or more persons, the offender shall be punished by imprisonment of two to twelve years."

Conclusion

Given that COVID-19 is a novel virus that is still expanding, and whose effects are very much reflected on people's lives and work on a daily basis, its full dimensions have not yet been fully understood. In other words, apart from the knowledge that the virus has reached the status of a pandemic, and that it continuously reflects badly on almost all aspects of human life and activity around the planet, we are guessing the real scope of COVID-19, its full capacity and possible response to future potential immunization. The true picture of the consequences (both tangible and intangible), is probably not even remotely in our grasp at this time.

The paper makes some remarks on the primary effects of the COVID-19 pandemic on all vital aspects of society, after which attention was focused on the analysis of the criminal treatment of actions that primarily consist of Failure to Act Pursuant to Health Regulations During Epidemic and Transmitting Contagious Diseases. In other words, we are talking about two criminal acts pursuant to current legislature Failure to Act Pursuant to Health Regulations During Epidemic (Article 248 of the Criminal Code) and Transmitting Contagious Disease (Article 249 of the Criminal Code). Both criminal acts can be found in the 23rd chapter of the Criminal Code, which encompasses criminal offenses against human health.

¹⁸ Stojanović, Z. (2019)., op. cit., p. 834.

There is no doubt that not only, the consequences of the presence of COVID-19, but also the application of all state measures to prevent the spread of the virus are significantly reflected, among other things, in the current legislation which, in accordance with its role, must keep pace with societal norms and changes. Criminal sanctioning of committing or omitting certain actions in the field of preventing the spread of infectious diseases is not a new legal solution it has come to the forefront in the months when the epidemic of the disease caused by COVID-19 was declared in our region.

References:

1. Babić, M., (2008): *Krivično pravo – opšti i posebni deo*. Pravni fakultet Univerziteta u Banja Luci, Banja Luka.
2. Bjelajac, Ž., Filipović, A., (2020): Lack of Security Culture in Facing the COVID-19 Pandemic. *The Culture of Polis*, Year XVII (2020), No. 42, pp. 383-399
3. Bjelajac, Ž., Filipović, A., (2020): Uticaj masovnih medija na degradaciju savremenog društva, u: *Uticaj masovnih medija na degradaciju savremenog društva*, ur. Željko Bjelajac i Aleksandar Filipović, , Kultura polisa, vol. 17, posebno izdanje, str. 9-21
4. Grupa autora (2020): *COVID-19 i zaposlenost u Srbiji: uticaj pandemije i mera za njeno sprečavanje na zaposlenost i uslove rada*, SeCons – development initiative group, Friedrich Ebert Stiftung.
5. GHS Index, <https://www.ghsindex.org/> (01.07.2020.).
6. ILO (2020): ILO Monitor: COVID-19 and the world of work. Third edition. Updated estimates and analysis, pp. 1-2, https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/briefingnote/wcms_743146.pdf (05.07.2020.).
7. Krivični zakonik, *Sl. glasnik RS*, br. 85/2005, 88/2005 - ispr., 107/2005 - ispr., 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016 i 35/2019.
8. Stojanović, Z., (2019): *Komentar Krivičnog zakonika*, Službeni glasnik, Beograd.
9. UNICEF (2020): *UNICEF-ov odgovor na pandemiju COVID-19 u Srbiji*, UNICEF Srbija, Beograd.
10. World Health Organization (2020): Coronavirus disease (COVID-19) outbreak, <http://www.euro.who.int/en/health-topics/health-emergencies/coronavirus-COVID-19/novel-coronavirus-2019-ncov> (07.07.2020.).
11. World Health Organization (2020): 2019-nCoV outbreak: first cases confirmed in Europe, <http://www.euro.who.int/en/health-topics/health-emergencies/coronavirus-COVID-19/news/news/2020/01/2019-ncovoutbreak-first-cases-confirmed-in-europe> (07.07.2020.).
12. World Health Organization (2020): Health emergencies, <http://www.euro.who.int/en/health-topics/healthemergencies> (07.07.2020.).
13. World Bank Group (2020): *Ekonomski i socijalni uticaj COVID-19 – zdravstveni sistemi, Redovni ekonomski izveštaj za Zapadni Balkan*, br. 17.
14. Zakon o zaštiti stanovništva od zaraznih bolesti, *Sl. glasnik RS*, br. 15/2016 i 68/2020.

КРИВИЧНА ДЕЛА НЕПОСТУПАЊЕ ПО ЗДРАВСТВЕНИМ ПРОПИСИМА ЗА ВРЕМЕ ЕПИДЕМИЈЕ И ПРЕНОШЕЊЕ ЗАРАЗНИХ БОЛЕСТИ

Сажетак: Поред бројних импликација у здравственом и пословном сегменту, пандемија COVID-19 утицала је и на то да кривична дела која санкционишу радње ширења заразних болести добију изузетно велику пажњу јавности. Реч је о делима која су до избијања пандемије фактички заузимала маргиналне позиције кривично-правне јавности. Дакле, ефекти пандемије COVID-19 између осталог, допринели су томе да два кривична дела, која су фактички до скоро била не приметна, дођу у центар пажње научне и стручне јавности. Неспорно је да здравље људи спада у једно од најважнијих групних заштитних објеката у кривичном праву. Пандемија и њене последице представљају огроман изазов не само у смислу правовремене адаптације здравственог система, те у социоекономском сегменту функционисања друштва, имајући у виду да последице COVID-19 наступају брзо и имају дугорочне последице и у економском и у социјалном смислу, већ и у легислативном смислу, јер управо сегмент усвајања нових и/или ажурирања постојећих законских и подзаконских решења мора пратити актуелна друштвена дешавања. У том смислу, нарочито су битна кривичноправна решења. У раду се анализира начелни утицај пандемије COVID-19 на све виталне аспекте у друштву, након чега је пажња усмерена на анализу кривичноправног третмана радњи које се преваходно састоје у непоступању по здравственим прописима за време епидемије и преношење заразних болести.

Кључне речи: COVID-19, Кривични законик, Непоступање по здравственим прописима за време епидемије, Преношење заразних болести

