

CRIMINAL LIABILITY OF A SURGICAL TEAM LEADER IF A FOREIGN BODY IS LEFT IN THE SURGICAL FIELD

Patients undergoing medical procedures are exposed to a number of risks. Long-lasting and highly complex surgeries are carried out in teams consisting of specialists in various fields of medicine. One of the serious risks that may arise in connection with the performance of surgery is leaving a foreign body in the surgical field. Taking into account the number of people involved in the surgical procedure and their tasks, the question arises as to who can be held criminally responsible for the crime of exposing the patient to imminent danger of loss of life or grievous bodily harm by leaving a foreign body in his body after surgery, such as a surgical sling.

In the literature on the subject, the prevailing view is that the responsibility for leaving a foreign body in the patient's body should always be borne by the team leader, i.e. the surgeon-operator, since his duties include controlling the work of all other team members, including, for example, instrument nurses. The responsibility of the surgeon-operator leading the team may be compared to the responsibility of a ship's captain for the resulting catastrophe. Applying the concept of the ship's captain in practice does not raise major complications, because it is enough to determine who led the team, and the culprit remains easily identifiable through the very feature of leadership. The case law indicates that it is the operator who is responsible for the entire operation, and the procedure of counting slings or surgical instruments is only an auxiliary procedure. The principle of the responsibility of the doctor directing the operation, adopted in practice, is therefore certainly «convenient», because it exempts from the analysis of further circumstances related to the work of individual members of the medical team providing the service in the form of surgery.

However, one cannot disregard the doubts that arise as to whether the team leader will always be held liable for unintentional guilt for exposing the patient to direct danger of death or serious injury to health. This is because a problem arises with regard to the formation of factual bases for the possible attribution of charges to the specialist surgeon who heads the medical team that performs the operation. This problem concerns, for example, the possibility of attributing negligence in the context of causality, which in relation to unintentional crimes is a specific behaviour of a doctor, which caused a specific course of causality ending with an effect, i.e. direct exposure of a patient to loss of life and health or death of a patient.

The operational team is understood as a multi-person subject configuration working together at the same time, the selection of which is made by the criterion of qualification (e.g. anaesthetist) and division of labour (e.g. «clean» and «dirty» nurse). Within the team, we distinguish between those who direct and supervise and those who perform specific activities. The division of activities is obvious, forced by reasons of rationality and pragmatism. After all, one cannot expect a team leader to count slings and a nurse to be able to predict the consequences of the improper use of surgical instruments. Criminal law (and consequently criminal liability) is the law of the act and guilt, with emphasis on the principle of individualisation of the scope of criminal liability, thus each perpetrator is liable only within the limits of his or her intentionality and unintentionality, while the mere attribution of intentionality or unintentionality to a given person does not prejudice guilt. It seems, however, that the courts too easily equate the concept of lack of due diligence in the exercise of the medical profession with the criminal law construct of guilt. Not without significance is also the important issue of trust in the operating team and its consequences for the criminal law assessment of the behaviour of the team leader and the related obligation to supervise and control the behaviour of other participants. It seems that the trust of team members in each other must be considered as a rule (with due diligence and precautionary rules). Also acceptable is the concept of «limited trust», according to which each qualified team member performs his or her duties diligently, and trust lasts as long as undesirable signs do not undermine it, and then the manager is obliged to treat the team member in question as if he or she had lost trust in him or her.

There is no doubt that leaving a foreign body in the body of an operated patient should not have happened at all. However, in criminal law, one should always look for an adequate causal relationship, and thus, one should look for predictable regularities, justified by the circumstances. Consequently, the concept of the ship's captain, unfavourable to physician-operators, begins to be seen as inappropriate, as attention turns to the tasks of individual team members, who should be seen as highly qualified medical personnel.

To sum up, in criminal law, a correct assessment of the facts requires a thorough, complete and objective establishment of the facts, respecting the principle in dubio pro reo. The position, according to which the doctor leading the team carrying out a surgical procedure will always be held responsible for leaving a foreign body in the operating field, should be criticised. The issue of the limits of responsibility of the physician leading the team should be considered in relation to the mistakes made by other team members - they will be determined by the unique conditions of the surgery related, among others, to the time of the operation, health condition of the patient, misleading by team members as to the unnecessary control of the surgical field and, most importantly, the aspect of resignation from this control dictated by the primary

good, i.e. the patient.

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CHARACTERISTICS AND MUTUAL RELATIONSHIP OF PERSONAL AND PROPERTY BENEFITS IN POLISH CRIMINAL LAW

Every action taken by a person serves to achieve an individual goal. Each time it will be some kind of benefit. Its task is to satisfy the needs of a specific person, having a direct impact on the situation of the entity it concerns. Defining the nature of the benefits is very important, but in practice it proves to be extremely difficult. As people who are constantly involved in relationships with other people, we receive many benefits with different characteristics every day. In most cases, they are indifferent to the provisions of criminal law, but sometimes we get those which achievement is against the law. Only then do we begin to reflect on their character. Such an addition is not accidental, it always has a specific cause and is expressed in a strictly defined way. However, these properties should be known in order to correctly assess the behavior of the