

Sheremeta Roman R. –

*student of MA program of the
Faculty for Training Investigators of
Kharkiv National University of Internal Affairs
(27 prosp. 50-richya SRSR, Kharkiv, Ukraine)*

Bailov Anton V. –

*assistant professor of department of criminal law and criminology of
the Faculty for Training Investigators of
Kharkiv National University of Internal Affairs,
candidate of juridical sciences, assistant professor
(27 prosp. 50-richya SRSR, Kharkiv, Ukraine)*

Social Background of Criminal Liability for Improper Performance of Responsibilities to Protect Children Lives and Health

Amendments in legislation are caused, primarily, by historical events. The development of the state and society along with destabilizing processes are driving instruments of rulemaking. The amendments and alterations to regulatory acts are made according to meet the needs and interests of the society. The society organizes and classifies the relations in this method and is the participant of such relations.

The “rule of law” principle leads to the humanization and construction of the system of legislation based on respect for fundamental human rights and freedoms, which guarantees their protection and safety by various legal institutions. The institute of criminal liability, as a representative of the radical, extreme measure of legal effect, emphasizes the importance and concern of the state and its social, legal, economic policy. The state very often applies to public opinion on this matter, which later is reflected in the policy documents of the Cabinet of Ministers of Ukraine, printings, television, radio, online media, reports on conferences, round tables, scientific and practical seminars on law, pedagogy and education, medicine, psychology, etc. This concern and actualization of the state of guaranteeing protection of life and health of the society, both adults and children, includes a number of studies of demographic and social indicators such as: low birth rate, high infant mortality, cases of irresponsible attitude of teachers and educators of educational institutions in performing their service and (or) professional duties, etc.

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According to official data of the State Statistics Service of Ukraine the population of Ukraine as of February 1, 2014 was 45 million

410,1 thousand people. During January, 2014 population has decreased by 16,1 thousand people counting per 1000 population was 4,2 persons. Compared with January, 2013 the volume of reduction has increased by 0,7 thousand people or from 5,0 to 5,2 persons per 1000 population. The rate of deaths over births remains as a significant excess: there are 67 births per 100 deaths. 348 children died at the age under 1 year. The mortality rate of children under 1 year has increased from 7,9 to 8,3 deaths per 1000 live births. The structure of causes of death among children under 1 year in January, 2014 (in percentage to the total number) was: 3,4% - some infectious and parasitic diseases; 2,0% - diseases of the nervous system; 4,0% - respiratory diseases; 52,0% - certain conditions occurring in perinatal period; 25,3% - natural defects; 3,2% - other diseases; 4,9% - unspecified and unknown causes of death; 5,2% - external causes [1].

Researched indicators give us reasons to affirm about the low birth rate along with the relatively high infant mortality. If we consider the causes of socially dangerous consequences (mental and physical health problems of various degree of severity, death) it is possible to isolate those that have occurred due to improper behavior of employees of educational institutions, medical establishments and other persons related to education and teaching process. The presence of these factors forms the basis for the necessary response from the government, which is realized in the need to establish criminal liability for such a socially dangerous act or to be more precise omission. In the XXI century it is not appropriate to speak about a man as a homo sapiens, it is necessary to focus on a person as a human being obliged to perform certain duties, modern education should be aimed at the eradication of omission, passive behavior. Therefore, there is no doubt the criminalization of this kind of acts that provide danger to others and especially to children. In each particular case of the infant's mortality we have to establish the reasons that have caused this. The following table depicts the number and structure of births, deaths in the ratio of January, 2014 to January, 2013:

| | Total, | For |
|--|--------|-----|
|--|--------|-----|

¹ Per 1000 live births and dead.

² Per 1000 live births and dead.

| | thousand | | January, 2014 in % to January, 2013 | 1000 persons | |
|---|---------------|---------------|-------------------------------------|-----------------|-----------------|
| | January, 2014 | January, 2013 | | January, 2014 | January, 2013 |
| The number of live births | 1,5 | 3,3 | 5,7 | 0,7 | 1,2 |
| Besides, the number of stillbirths | 69 pers. | 39 pers. | 12,6 | ,4 ¹ | ,5 ² |
| The number of death including children under 1 year | 48 pers. | 41 pers. | 02,1 | ,3 ³ | ,9 ⁴ |

As we can see, the percentage of infant mortality is quite large, and that is reflected in the negative demographic indicators Ukraine. An interesting fact turns out that statistical information presented by the State Statistics Service of Ukraine does not contain data on infant mortality in the full sense of the word, it means that there is no particular information on the mortality of persons under eighteen years indicating the structure of the causes of death of the latter. According to the UN Children Fund "UNICEF" there are 7971000 persons under eighteen years in Ukraine [2]. The authority of the Committee on Children Rights of the UN is to review the consolidated periodic reports of the states participants, including Ukraine, regarding the observance of children rights and to form concluding observations on this basis. The committee expressed concern with respect to Ukraine about the rate of mortality among infants, children and mothers that increases since 2003 regarding children under one year. Besides, the Committee is concerned about the fact of low number of maternity homes / offices that are "friendly to a baby" – particularly in rural areas, there are only 8% of them. In addition it was also noted in concluding observations about the large volume and increase of violent and neglect manifestations to children in all environments, extremely low percentage of cases of prosecution of such offences; absence of systematic research

³ Per 1000 live births.

⁴ Per 1000 live births.

and data collection on child abuse, including violence and neglect at the institutions outside the home, such as special education institutions and social rehabilitation centers [3].

Criminal and legal protection provides a system of repressive measures, which greatly restricts human rights (institution of criminal liability, sentencing, etc.), so the importance should be given to preventive measures. Thus, the opinion of scholars in the field of pedagogy and prevention of juvenile delinquency, in relation to the fact that “the origin of emotional disorders, behavioral disorders and other psychological problems of a child associated with individual adverse events in his/her childhood, is appropriate. Family conflicts, lack of love, education in the orphanage, parental cruelty or inconsistencies in the system of punishment – this is not an exhaustive list of circumstances that could injure child’s psyche” [4, p. 23-24; 5, p. 97]. Besides, the child suffers many problems in school, “in school a lot of children face rudeness of teachers, accusing without evidence, humiliation in front of classmates, public discussion of personal problems of a pupil (illness, family problems, absence from classes), rough criticism, sometimes with the use of physical force. In chase of knowledge teachers no longer see pupil’s personality” [6, p. 127-130]. However, along with mental influence, children suffer physical effects and have some diseases: various kinds of injuries and accidents with children, reflected in health problems, injuries of different severity, infectious, viral diseases. That is why considerable attention is paid to the problem of children’s education. It is done on the one hand – to prevent minor crime, on the other – to reduce victimization level and to protect health of minors. “Social validity of the norm is its compliance with objective tendencies of the relevant socio-economic formation’s development, its compliance with the requirements of social justice” [7, p. 211]. Liability for omission or improper performance of duties to protect children lives and health under the Art. 137 of the Criminal Code of Ukraine (hereinafter – CC) is appropriate and reasonable from the standpoint of a just, humane law, as the criminal law is used for protecting the most important social interest – the life and health of a child. The content of the concept of social

conditioning cover the entire scope of social phenomena and processes that directly or indirectly are created by an impact on criminalization, authorization or decriminalization of criminal liability for socially dangerous act.

Criminal liability for the improper performance of duties to protect children lives and health can not be questioned, since this issue is indicated not only in domestic laws, but in international and legal documents, namely, the Geneva Declaration of the Rights of the Child, 1924, the Declaration of the Rights of the Child, 1959, the International Covenant on Civil and Political Rights of 1966, the International Covenant on Economic, Social and Cultural Rights of 1966, the Convention on the Rights of the Child of 1989 and other international agreements that in a legal way were ratified by Verkhovna Rada of Ukraine and obliged the legislative and executive power of the state to settle economically, socially, legally in the extents of the Constitution of Ukraine to meet the interests of the world community and society. An objective assessment of applying the Art. 137 of the Criminal Code of Ukraine is not possible without researching the needs and acquisition of practical activity of law enforcement agencies. Between January and December, 2015 there were recorded 11 criminal proceedings, any of these proceedings contained messages of suspicion and there were no accusation [8]; between January-December, 2014 there were recorded 51 criminal proceedings, among them there were 10 proceedings with notice of suspicion charged to persons and 5 with accusation [9]. Between January and December, 2013 they counted – 105 criminal proceedings, reported 66 suspected persons, and accusation on 66 criminal proceedings [10]. The percentage of closed criminal proceedings against the accounted for January-February, 2015 is 36,4%; for January-December, 2014 it is 125%; and for January-December, 2013 is 123%. Presented statistical data shows that this category of cases has low judicial perspective that indicates about the inevitability of criminal liability. In order to solve theoretical and practical problems of the corpus delicti under the Art. 137 of the Criminal Code of Ukraine we consider it expedient to survey the employees of pre-trial investigation, prosecutor’s office, court and those who committed this crime. The method of questioning will make it possible to reveal most common problems to apply the

standards, including the difficulties of qualification and construction of valuation notions.

Thus, all stated above leads to the following conclusions.

1. Studied statistical indicators point to a low birth rate along with the relatively high infant mortality. Among the reasons of socially dangerous consequences (mental and physical health problems of various degree of severity, death) can be distinguished inappropriate behavior of employees of educational institutions, medical establishments and other persons related to the educational and learning process.

2. Criminal liability for improper performance of duties to protect children lives and health is defined in the Special Part of the Criminal

Code of Ukraine in accordance with the international legal documents.

3. Criminal proceedings registered in the Unified Register of Pre-trial investigation according to the fact of a crime commission under the Art. 137 of the Criminal Code of Ukraine have low court perspective that indicates about inevitability of criminal liability. In order to address the theoretical and practical problems of this corpus delicti, we consider it appropriate to survey employees of pre-trial investigation, prosecutor's office, court and those who committed this crime.

References

1. Demographic Situation in Ukraine in January, 2014. [Online resource] // Information of the State Statistics Service of Ukraine – Access : http://database.ukrcensus.gov.ua/PXWEB2007/ukr/publ_new1/2014/dem0114.pdf.
2. Children in Ukraine [Online resource] : Internet Portal of Children's Fund (UNICEF) – Access : <http://www.unicef.org/ukraine/ukr/children.html>.
3. The UN Committee on Children Rights. Concluding Observations: Ukraine. [Online resource] : Internet Portal of Children's Fund (UNICEF) – Access : http://www.unicef.org/ukraine/ukr/UN_CRC_ConcludingObservations_Ukr.pdf.
4. Ivanenko H. V. Some Theories of Old Times Heritage / H. V. Ivanenko // Childhood Protection. Children Law: Theory, Experience and Perspectives. Proceedings of the Conference Devoted to the 80th Anniversary of the Founding of the State Exponential Children's Village named after P. I. Komintern in Odessa : Scientific Papers. – Odessa : Yurydychna literatura (Legal Literature), 2001. – 252 p.
5. Holina V. V. Some Features of Modern Juvenile Delinquency and the Ways of its Overcoming / V. V. Holina, V. S. Batyrhareieva, B. M. Holovkin // Problems of Legality: Rep. interdep. scien. coll. / resp. ed. V. Ya. Tatsii. – Kharkiv : Natsionalna yurydychna akademiia Ukrainy (Nat. Law Acad. of Ukraine), 2003. – Vol. 62. – 207 p.
6. Hryshko T. V. Psychological Prevention of Domestic Violence / T. V. Hryshko // Children Protection. Children Law: Theory, Experience and Perspectives. Proceedings of the Conference Devoted to the 80th Anniversary of the Founding of the Exponential State Children's Village named after P. I. Komintern in Odessa : Scientific Papers. – Odessa : Yurydychna literatura (Legal literature), 2001. – 252 p.
7. Kudryavtsev V. N. Foundations of Criminal and Legal Prohibition (Criminalization and Decriminalization) [Online resource]. – Moscow : Publishing House "Nauka", 1982. – Access : <http://www.twirpx.com/file/1175659/>.
8. Unified Report on Criminal Offences throughout the Country in January-February, 2015 [Online resource] // The Official Web Portal of the Prosecutor General of Ukraine – Access : http://www.gp.gov.ua/ua/stst2011.html?dir_id=111482&libid=100820&c=edit&_c=fo.
9. Unified Report on Criminal Offences throughout the Country in January-December, 2014 [Online resource] // The Official Web Portal of the Prosecutor General of Ukraine – Access : http://www.gp.gov.ua/ua/stst2011.html?dir_id=112173&libid=100820&c=edit&_c=fo.

10. Unified Report on Criminal Offences throughout the Country in January-December, 2013 [Online resource] // the Official Web Portal of the Prosecutor General of Ukraine – Access : http://www.gp.gov.ua/ua/stst2011.html?dir_id=110381&libid=100820&c=edit&_c=fo.