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SUMMARY

The article deals with modern technologies of biometric identification of the person, which are used both for security systems and for access control and management systems, which actually exist in different countries of the world and are used in practice by various institutions and organizations including law enforcement agencies. Features of the use of the TV for the biometric system are also considered.

Keywords: human identification, thermal imaging cameras, biometric authentication, access control.

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IMPROPER FULFILLMENT OF RESPONSIBILITIES FOR MAKING THE SAFETY OF CHILDREN'S LIFE AND HEALTH OF: ISSUES FOR IMPROVING CRIMINAL LAWS

Алексей Ковальчук. НЕНАДЛЕЖАЩЕЕ ИСПОЛНЕНИЕ ОБЯЗАННОСТЕЙ ПО ОБЕСПЕЧЕНИЮ БЕЗОПАСНОСТИ ЖИЗНИ И ЗДОРОВЬЯ ДЕТЕЙ: ВОПРОСЫ СОВЕРШЕНСТВОВАНИЯ УГОЛОВНОГО ЗАКОНОДАТЕЛЬСТВА. Предметом исследования статьи являются уголовно-правовые нормы, устанавливающие ответственность за ненадлежащее исполнение обязанностей по обеспечению безопасности жизни и здоровья детей (ст. 165 Уголовного кодекса Республики Беларусь). Значительное внимание в статье уделяется научному толкованию признаков данного вида преступления. На основе проведенного

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исследования автор обращает внимание на несоответствие наименования данной статьи ее фактическому содержанию в части именования потерпевшего и возможных способов данного вида преступления. Аргументируется необходимость включения в диспозицию ч. 1 ст. 165 УК такого признака объективной стороны как «неисполнение», характеризующегося чистым бездействием, поскольку само по себе ненадлежащее исполнение обязанностей по обеспечению безопасности жизни и здоровья малолетнего не является тождественным неисполнению таких обязанностей. Автором предлагается введение уголовной ответственности за совершение исследуемого преступления родителем, поскольку уголовный закон необоснованно исключает его ответственность за данное преступление. Это обосновывается тем, что обязанности по воспитанию малолетнего на родителя не могут быть возложены по службе, специальному поручению или приняты добровольно, такие обязанности вытекают исключительно из семейных отношений.

Также обращается внимание на необходимость восполнения пробела в части криминализации общественно опасного последствия от анализируемого преступления в виде наступления смерти двух и более малолетних, что позволит наиболее точно дифференцировать уголовную ответственность за данное преступление. По мнению автора, позиция разрешения выявленных проблем путем формулирования нового видения ст. 165 УК позволит наиболее полно реализовать принцип правовой определенности уголовно-правовых норм белорусского уголовного законодательства об ответственности за данный вид преступления, реализовать принцип справедливости уголовного закона и уголовной ответственности.

Ключевые слова: *ненадлежащее исполнение обязанностей, неисполнение обязанностей, малолетний, несовершеннолетний, вред жизни и здоровью, уголовное законодательство, уголовная ответственность.*

Problem statement. The state, providing protection for the younger generation, establishes the responsibility of parents and other obligated persons for their improper performance of duties to ensure the safety of life and health of children. The rights and obligations of family members need constant and reliable protection from attacks by individuals whose views and needs do not coincide with generally accepted and socially approved rules of behavior [1, p. 13]. The article on criminal liability for the improper fulfillment of obligations to ensure the safety of life and health of children, as a special means of protecting the named benefits of children, was not known to the previous criminal legislation of Belarus. The rules on liability for this crime appeared only in the Criminal Code of the Republic of Belarus in 1999 (hereinafter – the Criminal Code) in Art.165 of the Criminal Code, and as correctly noted T.G. Khatenovich, were called upon to implement, as enshrined in ratified international acts [2-3], the principle of strengthening the responsibility of persons obliged to raise children and creating the conditions for their possible death or injury [4, p. 65-66]. Therefore, the point of view existing in the science of criminal law regarding the inappropriateness of the analyzed criminal law prohibition in the Criminal Code, we find insolvent [5, p.98], which does not take into account the generally preventive effect of the norms studied by us.

Basic content. The above article is currently worded as follows.

Article 165. Improper fulfillment of duties to ensure the safety of life and health of children.

1. Inadequate fulfillment of duties to ensure the safety of life and health of a minor by a person who is entrusted with such duties by service, or by a person who carries out these duties on a special assignment or voluntarily assumes such duties that entails inflicting less serious bodily harm to the children by negligence, the absence of signs of misconduct – shall be punishable by a fine, or by deprivation of the right to occupy certain positions or engage in certain activities with a fine, or corrective labor for a term of up to two years, or restriction of liberty for a term of up to three years.

2. The same act, which, through negligence, entailed the death of a child or causing grievous bodily harm, – the applicable sentence is the restriction of liberty for a term of up to four years or the deprivation of liberty for the same term with a fine and with the deprivation of the right to occupy certain positions or engage in certain activities or without deprivation.

The main immediate object of the analyzed crime.

In criminal law theory, for the most part, there is unanimity of scientists in understanding the immediate object of this crime as the life and health of a child [4, p.62; 6, p.351; 7, p.346; 8]. However, in some theoretical sources you can find a classification of crimes against life and health, where Art. 165 of the Criminal Code refers to crimes that cause harm to human health [9, p.80-99], which seems to be based on the title of this article and analysis of the norms enshrined in it, does not fully take into account the essence of the object of criminal law

protection of this crime. In our opinion, the point of view of N.A. Babi, who understands the safety of life and health of children [10, p.112]. Based on the foregoing, adhering to the concept of recognition as an object of a crime of public relations, we believe that the object of the crime under study is public relations that ensure the safety of life and health of a child. It also seems fair to single out an additional immediate object – social relations that ensure the normal physical, mental and moral development of minors. It is also necessary to clarify that in some cases, social relations may suffer, ensuring the execution of official or professional (non-official) duties to ensure the safety of life and health of a child, acting as an alternative additional direct object of the named crime.

Victims of the crime in question, based on the analysis of Part 1 of Art. 165 of the Criminal Code, acts as a child, under which the criminal law in part 7 of article 4 understands a person who has not reached the age of fourteen on the day of the crime. Self-legal protection of the life and health of a child is caused by specific age, socio-psychological and other features of his personality, which require additional guarantees for the exercise of his rights. Therefore, if the act described in part 1 of Article 165 of the Criminal Code in relation to a person who has reached the age of fourteen at the time the crime was committed, such an act, if there are appropriate signs, entails criminal liability on a general basis for causing appropriate bodily harm or death through negligence.

Let us pay attention to the name of the analyzed article “Improper fulfillment of obligations to ensure the safety of life and health of children”. As you can see, based on the interpretation of the title of the article, as well as the wording of the victim in part 1 of Article 165 of the Criminal Code, the legislator identifies the concepts of “juvenile face” and “children”, which is hardly to be recognized as admissible for the following circumstances. Firstly, the concept of “children” by age is much broader than the concept of “juvenile face”. Moreover, when you consider that the concept of “children” can be represented in the singular as the concept of “child”, under which on the basis of Art.1 of the Law of the Republic of Belarus “On the Rights of the Child” is understood to be an individual until he reaches the age of eighteen years of age (full age), if under the law he has not previously acquired full civil capacity [11], then the use of this concept in relation to the analyzed article will also not be appropriate.

Secondly, the use of the concept of “children” in the plural does not seem to correspond to the content of the analyzed norm, since article 165 of the Criminal Code protects the life and health of not children (two or more), but a specific young child. Therefore, the understanding by some scientists of the object of the named crime and the victim as the health and life of young children is not accurate [6, p. 351]. In the presence of a qualified consequence in the form of the occurrence of death of two or more children as a result of the aforementioned crime, T.N. Khatenevich [4, p. 61]. However, the author does not offer possible options for filling such a gap. We consider it necessary to supplement Art. 165 of the Criminal Code with a corresponding especially qualifying attribute. In order to implement the principle of legal certainty, the name of Art.165 of the Criminal Code must be stated as “Improper fulfillment of obligations to ensure the safety of life and health of *children*”.

The objective side of the commented crime is expressed by the legislator as an act in the form of improper fulfillment of obligations to ensure the safety of life and health, socially dangerous consequences in the form of less serious bodily harm (part 1 of article 165 of the Criminal Code) or serious bodily injury or death (part 2 of article 165 UK) and a causal relationship between them.

Act of the legislator in part 1 of Article 165 of the Criminal Code is formulated as improper fulfillment of obligations to ensure the safety of life and health of a child. T.G. Khatenevich and N.A. Babi argue that the improper performance of duties to ensure the safety of life and health of children is expressed in inaction [4, p. 62; 10, p. 112]. P.A. Dubovets and R.N. Klyuchko believe that the commission of a crime under Art. 165 of the Criminal Code, can be expressed both in the improper fulfillment by a person of his duties to ensure the safety of life and health of young children, and in the failure to perform such duties in general [6, p. 351; 7, p. 346]. We see the fallacy of the positions of scientists who believe that this crime is expressed in inaction, since the phrase “improper performance of duties” implies the action of the subject to perform such duties, but inappropriately, i.e. fussy, negligent, formal, untimely wrong, incomplete. The conclusion of scientists about the commission of this crime by inaction seems to be based on the fact that the Criminal Code does not have a norm that entails liability for pure inaction, and the qualification of such inaction under the general articles on responsibility for crimes against life and health does not reflect the specifics of the

criminal protection of children. We believe that this situation in science can be reflected in the incorrect practice of applying this article, therefore, to resolve this problem, it is necessary to supplement the disposition of Part 1 of Art.165 of the Criminal Code in the form of "non-fulfillment" of the respective duties. The title of the article under study is subject to a similar change. The presented regulatory approach will more fully reflect the essence of the act as a result of the commission of this crime and fill the legislative gap regarding the person's non-fulfillment of obligations to ensure the safety of children.

Obligations to ensure the safety of life and health of a child can be assigned to a person, as indicated by the criminal law, in the service, either on special assignment, or voluntarily accepted by that person. In this sense, the disposition of the analyzed norm is blanket. The specific obligations of the subject of the crime, depending on the scope of their implementation, are enshrined in local, departmental or other legal acts. Thus, in order to criminalize this crime, the law enforcer should establish the following conditions in aggregate: 1) what specific duties were assigned to the person who improperly performed them; 2) what exactly of the indicated duties was improperly performed; 3) whether the person had an objective and subjective opportunity for the proper execution of his duties.

Recall that when committing a crime under Art. 165 of the Criminal Code, the subject may be assigned the corresponding duties of service. Moreover, official duties often imply official duties. In this part, one should not confuse the duties assigned to the person in office by the duties assigned to the official, since not every carrier of duties in the respective position can be an official whose features are described in part 4 of Art.4 of the Criminal Code. The disposition of h. 1 Article. 165 of the Criminal Code, a negative sign is fixed containing a condition under which improper fulfillment of obligations to ensure the safety of life and health of a child does not entail liability under this article, expressed by the phrase: "in the absence of signs of malfeasance." Thus, the responsibility of officials who improperly performed their duties to ensure the safety of life or health of children only occurs for crimes against the interests of the service.

Since the constituents of this crime are material, the crime is recognized to be completed from the moment the specified consequences occur. An important sign of the objective side of this crime is the causal relationship between the act and the consequences that have arisen. To determine it, the law enforcer should be appointed to conduct appropriate examinations, as a result of which the question of establishing the severity of the injuries caused and the main immediate cause of the onset of such consequences should be raised. If the act was caused by the behavior of the perpetrator and was a necessary, logical and sufficient condition for the onset of socially dangerous consequences, then we should talk about the presence of a causal relationship.

The subject of this crime is special – an individual, sane person who has reached 16 years of age, who is obliged to ensure the safety of life and health of a minor. Analysis of the disposition of Part 1 of Art. 165 of the Criminal Code makes it possible to identify the following subjects of this crime: 1) a person who is responsible for ensuring the safety of life and health of a child in the service. These should include a teacher, educator, medical professional, trainer, etc. 2) a person performing such duties on a special assignment. Persons who perform these duties on behalf of the order include those who are instructed to accompany children on tourist and other trips, trips, etc. 3) a person who voluntarily assumed such duties. Persons voluntarily accepting such duties may be a guardian, trustee, nanny, nurse, grandfather, grandmother, etc.

However, T.G. Khatenevich notes that the subject of this crime should include parents participating in the upbringing and maintenance of children [4, p. 65]. Agreeing with this point of view, it should be concluded, however, that proceeding from the interpretation of part 1 of article 165 of the Criminal Code, it is difficult to attribute parents to three of the above categories of the subject of this crime, since the responsibility for raising a child cannot be assigned to them by service, special assignment or accepted voluntarily, such obligations stem from family relationships. Therefore, to fill in the gap of the criminal law norm that we are analyzing, to eliminate the problems of law enforcement, the parent should be supplemented as a person who can act as the subject of this crime.

The subjective side of this crime. E.A.Sarkisova is convinced that the subjective side of the crime in question is characterized by an imprudent form of guilt in the form of frivolity or negligence. With frivolity, a person foresaw the possibility of consequences in the form of less severe or serious bodily harm or death of a child as a result of his improper fulfillment of his duties to ensure the life and health of a child, but without sufficient grounds counted on their prevention.

With carelessness, the person did not foresee the possibility of the onset of such consequences, although with the necessary care and foresight, he should and could have foreseen them [8]. We are of the same opinion. However, we note that the primary act can be committed both intentionally and through negligence. The fault of the subject of the crime in relation to the socially dangerous consequences of such an act is characterized only by a careless form. If the intent of the subject of the crime with respect to socially dangerous consequences has occurred, the responsibility of this subject should be committed for intentionally causing bodily harm or death to a child. The motives and goals of this crime do not affect the qualification of this crime, however, they can be taken into account by the court when sentencing.

Conclusion. A study of the article on criminal liability for the improper fulfillment of obligations to ensure the safety of life and health of children allowed us to propose its edition in the following form.

Article 165. Failure or improper performance of duties to ensure the safety of life and health of a child.

1. Failure to perform or improper performance of duties to ensure the safety of life and health of a child by a parent or other person who is entrusted with such duties by service, or by a person who carries out these duties on a special assignment or voluntarily assumes such duties that entails inflicting less on the negligent grievous bodily harm, in the absence of signs of misconduct – shall be punishable by a fine, or by deprivation of the right to occupy certain positions or engage in certain activities with a fine, or corrective labor for a term of up to two years, or restriction of liberty for a term of up to three years.

2. The same act, which, through negligence, entailed the death of a minor or causing grievous bodily harm, – the applicable sentence is the restriction of liberty for a term of up to four years or the deprivation of liberty for the same term with a fine and with the deprivation of the right to occupy certain positions or engage in certain activities or without deprivation.

3. An act provided for in paragraph 1 of this article, which, through negligence, entails the death of two or more children, – the applicable sentence is the restriction of liberty for a term of up to five years or the deprivation of liberty for a term of up to six years with a fine and with deprivation of the right to occupy certain positions or engage in certain activities or without deprivation.

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Summary

The subject of this article is the criminal law that establishes liability for the improper fulfillment of obligations to ensure the safety of life and health of children (Article 165 of the Criminal Code of the Republic of Belarus). Considerable attention is paid to the scientific interpretation of the signs of this type of crime. Based on the study, the author draws attention to the inconsistency of the name of this article with its actual content in terms of naming the victim and possible methods of this type of crime. According to the author, the position of resolving the identified problems by formulating a new vision of Art. 165 of the Criminal Code will make it possible to fully realize the principle of legal certainty of criminal law provisions of the Belarusian criminal law on liability for this type of crime, to implement the principle of justice of criminal law and criminal liability.

Keywords: *improper performance of duties, non-performance of duties, child, harm to life and health, criminal law, criminal liability.*