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REPARATION OF THE DAMAGE CAUSED BY NEGLIGENT VIOLATION OF THE MEDICAL ASSISTANCE RULES AND METHODS

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"There is no fact which may not become a subject of dispute, and which the scientists would not have contradictory opinions about" – David Hume, English philosopher (1711-1776)

SUMMARY

The relevance of this study is determined by the increasing frequency in recent years of patient deaths and severe bodily harm due to the improper conduct of some medical workers concerning their duties, resulting from criminal negligence, an indifferent attitude towards the outcomes of their work and the fate of the patient.

There have even emerged doctors whose main objective is careerist tendencies and the desire to enrich themselves at the expense of unfortunate patients who have entrusted them with their health and lives. State control over the activities of curative and preventive institutions and the quality of medical services provided has diminished.

To establish cases of mass violation of patients' rights, extortion of money, and breaches of rules and methods of providing medical services, the competent authorities have adopted a series of laws and other normative acts aimed at protecting patients from prevailing illegality and ensuring strict compliance with the current legislation by all medical personnel.

Additionally, given that patients suffer both property and moral damages, we aim to elucidate effective mechanisms for their repair.

Keywords: damage, methods of providing medical assistance, medical negligence, liability, malpractice.

Introduction. *General considerations regarding regulations applicable to damages caused by negligent violation of rules and methods of providing medical assistance.*

In medical practice, it is imperative to know legal norms, as their observance ensures the protection of the physician in performing their professional activities, especially in the current context where patients are increasingly insistent on the respect of their rights.

The formalization of all rights and obligations of medical personnel, as well as the responsibility they bear for negligent and defective activity, has been known for millennia and emerged with the formation of states [15, p.96].

The issue of medical malpractice has its origins in ancient times, and with it, the responsibility of the physician has adapted to the social system of the era. Various societies have approached and resolved this issue in different ways, often exceeding the moral limits of the time.

The interference of physicians with justice has deep roots, being attested since the earli-

est times of antiquity. One of the oldest pieces of evidence in this regard is found in the Code of Hammurabi, a collection of laws from the reign of the Babylonian King Hammurabi (1728-1686 BC). This code contains provisions related to medical liability, including sanctions for potential mistakes in medical practice.

Similar regulations to those in the Code of Hammurabi existed in other ancient cultures, such as Ancient Greece, the Roman Empire, Egypt, and China. In the Romanian space, in the Principality of Moldavia, regulations regarding medical activity and responsibility first appeared in Vasile Lupu's Code, published in Iasi in 1646. These regulations represented an important step in establishing medical norms and responsibilities in that period [2, p.96].

This compendium, known as the Romanian Book of Learning (from imperial rules and other counties), marked the transition of Moldavia from unwritten (oral – "custom of the land") to written law and provided certain sanctions against physicians who did not honor their professional obligations or, especially, participated in criminal actions [6, p.37-38].

Scientific research related to damages caused by negligent violation of rules and methods of providing medical assistance. Practically, in present, all countries in the world, including the Republic of Moldova, have normative acts regulating the activities and responsibilities of medical personnel. These normative acts are designed to ensure high standards in the provision of medical care and for protection both patients and medical staff. They establish rules and procedures regarding the quality of medical services, professional ethics, medical responsibility, and other relevant aspects of the healthcare system.

To classify an act under criminal norms [13], the specialized literature provides a set of legal conditions for holding individuals, including medical personnel, accountable, as follows:

Illicit conduct: The unlawful act;

Damage: The resulting harm;

Causal link: The connection between the illicit conduct and the resulting harm;

Guilt: The culpability of the subject of the illicit act;

Absence of exonerating circumstances: The non-existence of factors or circumstances that would eliminate legal responsibility.

According to author I.G. Vermeli [18. p.112], the criminal liability of medical personnel for negligent assistance may arise based on the concurrence of certain grounds:

1. The actions of the medical personnel were incorrect and contradicted the recognized principles of providing medical assistance;

2. Considering the professional training obtained and the position held, the medical personnel should have been aware that their actions were wrong and could cause harm to the patient's health;

3. The incorrect actions led to adverse consequences.

Comparatively, Romania's Health Reform Law establishes the civil liability of medical personnel for damages caused in the exercise of their profession, known as liability for malpractice [1, p.67].

Malpractice is defined by this law as "…the professional error committed in the exercise of the medical or medico-pharmaceutical act, generating damages to the patient, involving the civil liability of the medical personnel and the provider of medical, sanitary, and pharmaceutical products and services".

Liability for malpractice does not eliminate the possibility of criminal liability, if the act causing the damage constitutes a crime according to the law.

The penal legislation [8, Art.213] provides liability for the negligent violation of rules or methods of providing medical assistance by a doctor or another medical worker, which arises only in cases of severe bodily harm or health impairment or death of the patient.

Criminal liability can affect both the doctor who committed the alleged crime and any other

member of the medical personnel involved in providing medical assistance in that case. It is important that all those involved in the medical process be aware of their responsibilities and act in accordance with existing laws and ethical norms to ensure a safe and ethical environment for patients.

Responsibility also arises from the provisions of the Health Protection Law [12, Art.14], which states that "…medical and pharmaceutical workers are responsible for professional incompetence and violation of professional obligations, in accordance with the current legislation". In this regard, the violation of professional obligations by persons providing medical assistance is discussed in the legal literature [3, p.804] as a violation of the rules or methods of providing medical assistance and manifests in the following forms:

1. Insufficient examination of patients and failure to perform special diagnostic exams;
2. Careless supervision and care of children;
3. Delayed or unrealized hospitalization or premature discharge of patients from the hospital;
4. Insufficient preparation and poor execution of surgical operations or other curative measures;
5. Incorrect administration of medication, etc.

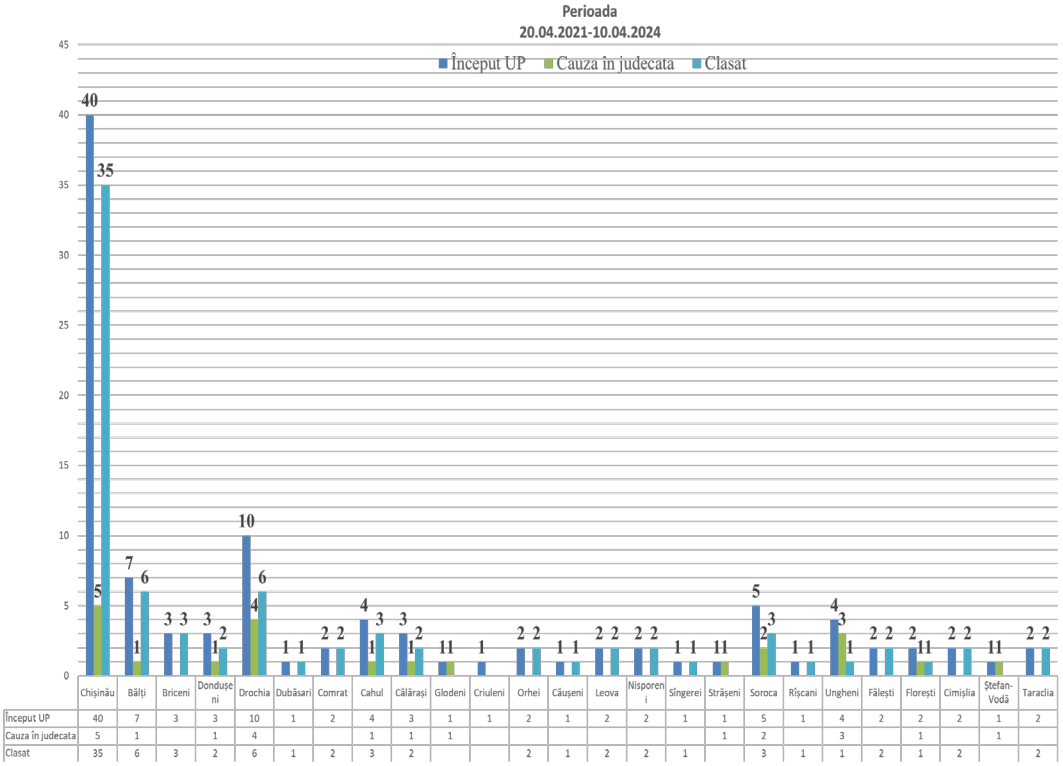
In the context of the above, it can be deduced that in the case of incorrect or negligent treatment applied by a doctor to a patient, damages of any nature may be caused, affecting physical and psychological capacity as appropriate.

Accordingly, the injured patient, or their relatives or successors, can claim material compensation using legal instruments such as a civil action in a criminal trial [14, p.87], or by choosing the civil procedural route to repair or recover damages caused by the negligent violation of rules and methods of providing medical assistance [17, p.67].

Analysis of judicial practice regarding damages caused by negligent violation of rules and methods of providing medical assistance. To substantiate the proper reparation of the caused damage, the delicate issue lies in establishing the causality relationship as a consequence of the illicit act. According to doctrine and judicial practice, the causality relationship encompasses both the facts that constitute the necessary and direct cause and the facts that made the causal action possible or ensured or aggravated its harmful effects.

Determining the causality relationship between the illicit medical act and the damage requires establishing, on a scientific basis, all correlations between facts and circumstances, retaining in the causal field only those that have a direct or indirect, mediated or unmediated contribution to producing the damage and that make it possible to identify the main, secondary, internal, external, concomitant (congruent or associated) causes and the conditions that mediated the action of the causes.

Unfortunately, a pessimistic statistical picture emerges regarding the examination of materials recorded by the prosecution bodies. The period from April 20, 2021, to April 10, 2024, was analyzed, during which criminal investigations were initiated in about 103 cases, of which 91 were dismissed due to the lack of elements of the offense, and only 22 were sent to court (Table No.1).



	Chișinău	Bălți	Briceni	Dondușeni	Drochia	Dubăsari	Comrat	Cahul	Călărași	Glodeni	Criuleni	Orhei	Căușeni	Leova	Nisporeni	Sîngerei	Strășeni	Soroca	Rîșcani	Ungheni	Fălești	Florești	Cimișlia	Ștefan-Vodă	Taraclia
Început UP	40	7	3	3	10	1	2	4	3	1	1	2	1	2	2	1	1	5	1	4	2	2	2	1	2
Cauza în judecata	5	1		1	4			1	1	1							1	2		3		1		1	
Clasat	35	6	3	2	6	1	2	3	2			2	1	2	2	1		3	1	1	2	1	2		2

Table 1: *Infographic on the initiation of criminal proceedings for cases of negligent violation of medical assistance rules and methods*

From the Contents of Table No. 2, we can deduce: only 22 cases were sent to court, with the distribution as follows: Chișinău: 5 cases; Drochia: 4 cases; Ungheni: 3 cases. In other localities, during this period, practically only one case was sent to court in each.

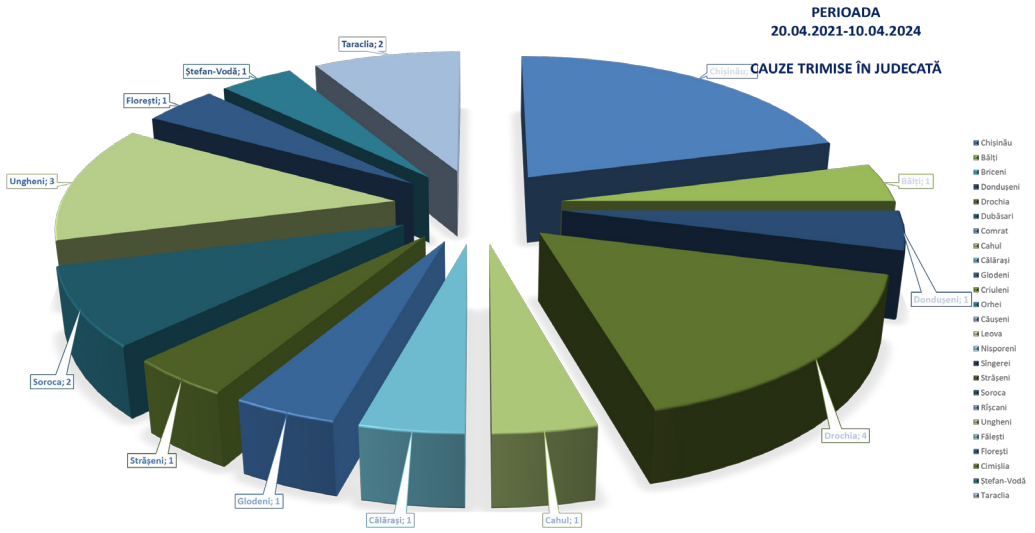


Table 2: *Infographic on cases sent to court for negligent violation of medical assistance rules and methods*

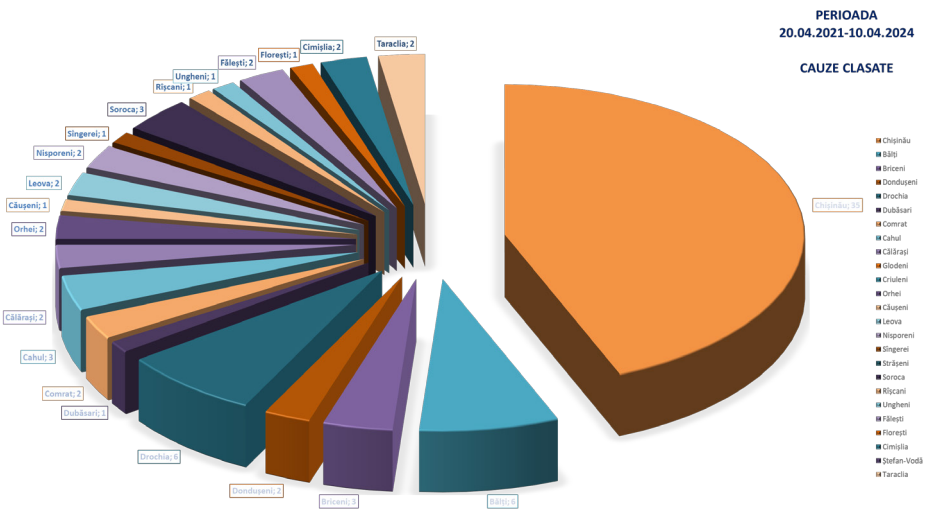


Table 3*: Infographic on cases classified for negligent violation of medical assistance rules and methods*

From the information presented above, the *case of Scripnic v. Republic of Moldova* [4], serves as an example. In this case, the European Court of Human Rights found both material and procedural violations and obliged the defendant – State – to pay compensation to the claimants, amounting to 15,000 EUR.

Essentially, the factual situation, as presented by the claimants, can be summarized as follows: "...On June 3, 2003, the second claimant was admitted to Municipal Clinical Hospital No. 2 to give birth to their second child. A group of doctors examined her and concluded that she had a proportionally flat and narrow pelvis, a condition that made natural childbirth dangerous. However, Dr. L. proceeded with the birth without performing a cesarean section. A medical report drawn up on the same day noted that the claimants' newborn had bleeding in the skull, brain tissue, and around the right rib; the bleeding occurred during childbirth as a result of medical manipulations. On June 5, 2003, the claimants' child died due to cranial trauma sustained during birth".

At an unspecified date in 2003, the claimants filed a criminal complaint against Dr. L. Criminal proceedings were initiated on December 25, 2006, but were terminated on October 2, 2009, due to the expiration of the statutory limitations.

On May 25, 2010, the claimants filed a civil action against Dr. L. and Municipal Clinical Hospital No. 2 seeking compensation for material damage in the amount of 11,550 Moldovan lei (MDL) (equivalent to 730 euros (EUR)), moral damage in the amount of 2,000,000 lei (equivalent to 126,450 euros), and legal expenses totaling 7,000 MDL (equivalent to 443 EUR). They relied on the provisions of the Civil Code regarding delictual liability and Law No. 411 regarding the hospital liability.

On November 27, 2011, the Riscani District Court partially upheld the claimants' claims and awarded them 60,000 MDL (3,800 EUR) for moral damages and 7,000 MDL (443 EUR) for costs and expenses. The court concluded that Dr. L. was in tortious liability since he acknowledged his guilt during the interrupted criminal proceedings on October 2, 2009, and this circumstance excluded the hospital's vicarious liability. The court found the claim for moral damages excessive in light of the economic situation and average salary in Moldova.

The claimants appealed, arguing that the compensation awarded was insufficient and that the hospital was illegally exempted from vicarious liability for its employee's negligent acts.

On April 26, 2012, the Chisinau Court of Appeal awarded them an additional sum of 11,500 MDL (724 EUR) for material damage. The reasons given by the Chisinau Court of Appeal were incorporated by reference into the court decision. The court did not address the claimants' asser-

tion that the hospital was indirectly responsible.

The claimants further appealed and reiterated their claims before the Appellate Court. On March 20, 2013, the Supreme Court of Justice dismissed their appeal as unfounded. That decision was final.

With reference to the relevant national legislation and practice of Moldova, the following can be stated:

The Law on Health Protection No. 411 of March 28, 1995 [12, art.19], establishes the following:

"Article 19. Right to compensation for harm to health

(...)

Letter (3). Patients (...) have the right to compensation for harm caused to patients by medical institutions through (...) improper treatment that aggravates the health condition, causes permanent disability, endangers the patient's life, or results in death".

The relevant provisions of the Civil Code [7, Art.1398/1998] of June 6, 2002, in force at the time of the events, state:

"Article 1398 (1998). Basis and general conditions of tort liability

Letter (1). Anyone who acts unlawfully, with guilt, is obliged to compensate for pecuniary damage, and in cases provided by law, also for moral damage caused by action or omission.

(...)

Article 1403. Principal's liability for agent's act

Letter (1). The principal is liable for damage caused with guilt by his agent in the functions entrusted to him".

The relevant provisions of the Civil Procedure Code of Moldova establish the following:

"Article 130.

1. The court assesses evidence according to its inner conviction, based on a multi-aspect, complete, impartial, and direct examination of all evidence in the file in their entirety and interconnection, (...).

2. No evidence has a pre-established probative force for the court (…)".

In the *case of Spînu v. Rentel SRL* [5] (No. 2ra-923/13), definitively decided by the Supreme Court of Justice on March 20, 2013, the national courts awarded the claimants moral damages in the amount of 490,000 MDL (30,690 EUR, according to the exchange rate in force on the date of the final decision) for the death of a relative, which involved the tort liability of the defendant company (the victim's fall into an unfenced and unmarked ditch dug by the respective company). The Prosecutor's Office, seized in this case, issued a decision to dismiss the case because the elements of a criminal offense were lacking.

Essentially, the claimants complained, under Article 2 of the Convention, that they did not receive redress, particularly, that they did not receive adequate compensation for the damage caused.

Furthermore, the claimants also complained, under Article 6 of the Convention, that the courts did not provide sufficient and adequate reasons for rejecting their assertion that the hospital was indirectly responsible.

In this regard, the position of the European Court is well-founded and through the prism of the fact that: "…Even if the claimants had not initiated and properly followed the criminal procedure against the hospital, the Court is not convinced that, as the Government claims, establishing the hospital's criminal liability was a prerequisite for engaging its tort liability. Firstly, this does not explicitly result from the relevant provisions of the Civil Code, and the Government does not provide any examples of national case law to support its claims. Moreover, it observes that, according to the legislation of the Republic of Moldova, civil courts have the possibility to independently evaluate all evidence and form their own conviction, and they are not formally bound by any findings of criminal investigation bodies. In this respect, the Court refers to the circumstances of the case *Ciorap v. Republic of Moldova* (No. 4) (No. 14092/06, §§ 28, 34-38 and 57-58, 8 July 2014), in which civil courts compelled a hospital to compensate for damage caused

by medical negligence, in the absence of the establishment of a criminal offense by that hospital. Also, from the national case law (the case *Spînu v. Rentel SRL* (No. 2ra-923/13)), it results that civil courts did not take into account any potential criminal liability of the defendant company in establishing its tort liability" [4, p.36].

Conclusions. The use of appropriate protocol treatment standards, continuous medical education, advanced knowledge of health legislation, proper preparation of medical documentation, respect for patient rights, including adequate information and obtaining informed consent, as well as improving communication with the patient are fundamental mechanisms for significantly reducing cases of malpractice and accusations against medical personnel in the Republic of Moldova.

It remains for case law and specific legal institutions to precisely individualize medical liability and to achieve the principle of *nulla poena* sine culpa *(latin for „no punishment without guilt")* [11], to delineate failure from error and mistake, to enable the precise knowledge of medical facts and their interpretation in a legal context, „at the intersection of scientific truth, the relationship between the incriminated fact and the requirements of the legal norm" [16, p.88-90].

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