INTRODUCTION

According to the Constitution of Ukraine, human life and health is declared as the highest value nationwide. That is why the criminal legislative normative standards of the Criminal Code (hereinafter referred to as the CC) of Ukraine, adapting the constitutional provisions, established penalties for the offence against the highest value, and in the Article 1 of the CC of Ukraine puts the human rights and freedoms forward in the hierarchy of objects of the criminal law.

The analysis of facts of offences causing severe and moderate bodily harm, reported by domestic and foreign researchers, as well as the practice of conduct of the forensic medical examination have shown that, mostly, health disorder associated with permanent disability is the consequence of criminal offence against victims’ health. Forensic medical examination faces legal uncertainty in establishing such consequences. The paragraph 2.1.6 of the Rules of Forensic Medical Examination on defining the degree of bodily harm severity, approved by the Order of the Ministry of Health of Ukraine No. 6 as of January 17, 1995 (hereinafter referred to as the Rules), states that health disorder is a consistently developed illness that associated directly with bodily harm. Following by this, the Rules specify that the amount of permanent (stable) loss of the general ability to work related to bodily harm is established after the consequence of the harm, which has been defined, on the basis of objective data, taking into account the documents that guide the work of the Medical and Social Expert Commission (hereinafter referred to as the MSEC) [1]. Currently, the Order of the Ministry of Health of Ukraine (hereinafter referred to as the MOH of Ukraine) as of 05.06.2012 № 420 “On the approval of the Procedure and Criteria for Medical and Social Expert Commissions to determine the degree of permanent disability in percentage for employees with health disorder related to the performance of occupational duties is active [2]. However, the CC of Ukraine states a heath disorder associated with permanent disability of not less than one third as the sign of serious bodily harm; long-term health disorder or significant permanent disability of less than one third as the sign of moderate bodily harm; short-term health disorder or minor disability as the sign of minor bodily harm. In other words, the CC of Ukraine does not indicate either general or professional ability to work. The existence of legal uncertainty is stated, which calls into question the conclusions of the forensic medical examination.

The issues of legal regulation of sentencing for causing bodily harm, improvement of law enforcement practice in

HEALTH DISORDER ASSOSIATED WITH PERMANENT DISABILITY AS THE SIGN OF BODILY HARM

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ABSTRACT

The aim: The paper is aimed at creation of the procedure and criteria for determining a health disorder associated with permanent disability as a sign of serious bodily harm.

Materials and methods: To identify the problems faced by forensic medical and judicial practice in determining a health disorder associated with permanent disability, we studied more than 100 criminal proceedings from 2007 to the present time.

Results: Ways to further improvement of the procedure for conducting expert studies on health disorders, associated with persistent loss of general ability to work as a characteristic feature of the bodily harm have been found to avoid errors in forensic medical and judicial practice. The issues of conducting forensic medical examinations to determine the degree of loss of general ability to work remain unresolved. The lack of joint research projects conducted by both medical and legal scientists leads to the polysemy and different approaches in the stating of certain concepts that are the subject of study of both medical and law sciences. Currently, the definition of the offence against health is debatable and the issues of criteria for determining such damage are not completely settled to date.

Conclusions: We consider the development of the Procedure and Criteria for determining the degree (in percentage) of the permanent loss of general ability to work of victims of criminal offences, established by forensic medical experts, is crucial.

KEY WORDS: serious bodily harm, permanent disability, forensic medical and judicial practice

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this domain have been considered only fragmentarily in the works on criminal law counteraction to bodily harm. However, no investigations related to solving the problems of sentencing for bodily harm that caused health disorder associated with permanent disability, made by the joint efforts of criminologists and medical scientists have ever been conducted, resulting in existing of terminological confusion in the current legislation not only on criminal liability, but also on public health. However, the study of this problem leads to the conclusion that the issues of determining the bodily harm that caused health disorder associated with permanent disability are characterized by complexity, i.e. are both medical and legal issues.

THE AIM
The creation of the procedure and criteria for determining a health disorder associated with permanent disability as the sign of serious bodily harm, the punishment for which is provided by the Article 121 of the CC of Ukraine, and moderate bodily harm (Art. 122 of the CC of Ukraine), as well as the ability for their legislative modeling and establishing in the medical law.

MATERIALS AND METHODS
To identify the problems faced by forensic medical and judicial practice in determining a health disorder associated with permanent disability as the characteristic feature of a serious bodily harm, the punishment for which is provided by the Article 121 of the CC of Ukraine and moderate bodily harm (Art. 122 of the CC of Ukraine), we studied more than 100 criminal proceedings from 2007 to the present time (01.02.2020 inclusive), in which forensic medical examination was conducted to identify cases of assessment of the presence of the above sign in victims. The conventional methods of research have been used, namely, the analysis and synthesis, statistical method as well as our own observations of the process of court trial of the above criminal proceedings. Moreover, to analyze the perception of victims of crime and their physical condition, individual interviews and survey have been made. Respondents of the investigation were directly victims and their family members in total of 39 people and 18 forensic experts. The survey was also conducted among judges, investigators and prosecutors (hereinafter referred to as the lawyers) in total of 129 people to explicate their opinion on the need for amendments to legislative acts on the statement of signs of serious bodily harm.

RESULTS
Section 1 of the Article 121 of the CC of Ukraine established a penalty for intentional serious bodily harm, i.e., intentional bodily harm which caused a health disorder, associated with permanent disability not less than one third, ...liable for imprisonment for a term of five to eight years. Section 1 of the Article 122 of the CC of Ukraine established a penalty for intentional moderate bodily harm, i.e., intentional bodily harm, which is not life-threatening and not entailing the consequences provided for in the Article 121 of the CC of Ukraine, but that caused long-term health disorder or significant permanent disability of less than one third, liable for correctional labor up to two years or custodial restraint up to three years, or imprisonment up to three years. Section 2 of the Article 125 of the Criminal Code of Ukraine provides for a penalty for intentional minor bodily harm that caused a short-term health disorder or minor disability, liable for a fine of fifty to one hundred non-taxable minimum incomes of citizens or community service order for a term of one hundred and fifty to two hundred and forty hours or correctional labor up to one year, or sentence of confinement up to six months, or custodial restraint up to two years.

Thus, for all types of bodily harm, criminal law requires the establishment of disability. At the same time, the emphasis is put on determination of percentage of general disability and in such cases should be guided by the MSEC documentation. The MSEC determines the degree in percentage of permanent loss of professional ability to work of employees with health disorder related to the performance of occupational duties. Then what should forensic experts do in such uncertainty? In this case, M.M. Tagaev proposes to use the Table, developed by the Central Department of State Insurance of the Ministry of Finance of the USSR as of 12.05.74 № 110 “On the organization and conduct of medical insurance examination” [3].

The above approach cannot be considered rational for the following reasons: 1) neither the body that adopted this normative act, nor the country in which the document was adopted exist anymore; 2) updated table was developed by the Central Department of State Insurance of the Ministry of Finance of the USSR on January 8, 1986 № 2 “On the organization and conduct of medical insurance examination” [4]. With the adoption of this Instruction (as of January 8, 1986), the Instruction as of May 12, 1974 was of no legal force. Forensic practice is based on these considerations. Thus, in the proceeding № 1-кп / 391/32/19, Kompanivskyi district court of Kirovohrad region referred to the conclusion of the forensic expert № 672 as of November 22, 2018, which established that PERSON_1 was exposed to bodily harm in the form of the penetrating wound of the sclera with loss of membranes and the contents of the left eye, hyphema, hemophthalmia of the left eye, which led to the extraction of the eye. Taking into account the data of the medical records of the inpatient named PERSON_1, the nature of the injuries described in it does not exclude the possibility of injury made on 24.10.2018. Given the visual acuity of the left eye before injury according to the outpatient medical record = 1.0, and the extraction of the left eye as a result of injury, bodily harm is assigned to the category of the serious bodily harm that caused permanent disability by more than 1/3. According to the “Table of percentages of loss of general ability to work as a result of various injuries” of the “Instruction on the procedure for the organization
DISCUSSION

The issue of conducting commission examinations in the case of determining the degree (in percentage) of disability is problematic. Paragraph 3 of the Rules of conduct of forensic medical examinations [6] stipulates the need for mandatory forensic medical examinations only in case of loss of professional ability to work. However, par. 2.4 and sub paragraph 2.4.3 of the Instruction on conduct of forensic examination [18] provides for the mandatory participation of several experts and the need for examination in the department of commission examinations not only in cases of determining the degree of loss of professional ability to work, but also in case of determining the degree of loss of general ability to work. Other health disorders associated with permanent disability of not less than one third are not mentioned at all in the Rules of conduct of
commission Forensic Medical Examinations [6] and the Instruction on conduct of Forensic Examinations [18]. So what does the Criminal Code of Ukraine state?

In addition, the statement of the Section 1 of the Art. 121 of the Criminal Code of Ukraine as: “the intentional serious bodily harm, that is, intentional bodily harm that is life-threatening at the time of infliction, or causing the loss of any body organ or its functions, mental illness or other health disorder associated with permanent disability of not less than one third, or termination of pregnancy or irreversible face disfigurement...” remains problematic. Apparently, intentional serious bodily harm causes damage, which is manifested in one of its signs, and not vice versa. Based on the rules of the formal logic, at the statement of the other health disorder associated with permanent disability of not less than one third, etc. it is possible to evaluate the bodily harm as the serious ones, but it is not the serious bodily harm that causes other health disorder associated with permanent disability of not less than one third, etc.

CONCLUSIONS

1. Undoubtedly, human life and health are recognized as the highest value nationwide according to the constitutional provisions. However, the state does not pay due attention even to the protection of these values, but to the regulation of all issues related to cases of damage to health and its determination (medical evaluation). Issues of conducting forensic medical examinations to determine the degree of loss of general ability to work remain unresolved.

2. The lack of joint research projects conducted by both medical and legal scientists leads to the polysemy and different approaches in the statement of certain concepts that are the subject of study of both medical science and law. And currently, the definition of damage to health is debatable and the issues of criteria for determining such damage are not completely settled. Therefore, it is extremely necessary to develop a Procedure and Criteria for determining by forensic experts the degree in percentage of permanent loss of general ability to work of victims with health disorder related to criminal offence against their life.

3. Section 1 of the Article 121 of the Criminal Code of Ukraine should be stated as follows: “infliction of intentional serious bodily harm, that is, intentional bodily harm, life-threatening at the time of infliction, or causing loss of any organ or loss of its functions, mental illness or other health disorder associated with permanent disability of not less than one third, or termination of pregnancy or irreversible face disfigurement...”.

The study shows a further need to develop clear medical criteria for determining the severity of bodily harm, based on the achievements of current forensic medical science. Moreover, it is the medical science that must define a clear algorithm for determining the severity of health disorder associated with permanent loss of general ability to work, resulted from criminal offence.

REFERENCES


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