



Coronavirus (COVID-19) and Possibilities for Criminal Law Reaction in Europe: A Review

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Abstract

Coronavirus (COVID-19) is the newest dangerous contagious disease in the world, emerged at the end of 2019 and the beginning of 2020. World Health Organization at the daily level publishes numbers of infected patients as well as several dead people around the world and in every region particularly. However, public health and criminal law are inevitably linked. National criminal laws in Europe mainly prescribe criminal offences for transmitting a dangerous contagious disease. Numerous states have closed their borders, quarantining their nationals that entering in the state. Strangers cannot enter in European Union. However, many do not abide by the restrictions, and people who have become ill with coronavirus walking the streets and committing a criminal offence. The authors in the work, in the first place, explain the connection between public health and criminal law and then elaborate criminal jurisdictions in Europe.

Keywords: Coronavirus; Dangerous contagious disease; Criminal offence; Transmitting

Introduction

Public health and criminal law are in a close connection during the history of its development, through the issues of mental health (1), alcoholism, intoxication (2), AIDS (3-7), paranoia (8), euthanasia and physician-assisted suicide (9-13), and today, dangerous contagious disease. For example, legislators around the world are grappling with the question of whether or not the criminal law should be deployed to punish HIV transmission that is the result of voluntary sexual encounters between competent, consenting adults (14). In medicine, there are many contagious diseases, such as rubella (15).

However, numerous contagious diseases are not subject to interesting in criminal law. Therefore, one of the main question in this field is how does a public health approach towards crime differ

from a criminal justice one (16)? Researchers in the United States have moved forward with interventions on traditional criminal justice populations driven from a public health perspective and these interventions may include a multi-agency collaboration in which hospitals play a central role, a more concentrated focus on the prevention of risk behaviors, harm reduction, the implementation of programs that focus on behavioral change over time, and the adoption of treatment delivery systems in criminal justice settings (16-20). We have to note that long the scourge of civilization, infectious diseases have marked the development of societies in all regions of the world, while in the late 1960s, the American medical and scientific establishments

proclaimed victory for humankind over infectious diseases (21). It is not true in this century.

However, the emergence of new types of contagious diseases and the problem of their transmission is pressing question in criminal law. This problem is actualized at the end of 2019 and the beginning of 2020 with the COVID-19 or coronavirus.

According to WHO, coronaviruses are a large family of viruses that cause illness ranging from the common cold to more severe diseases such as Middle East Respiratory Syndrome (hereinafter: MERS-CoV) and Severe Acute Respiratory Syndrome (hereinafter: SARS-CoV (22)). Coronaviruses are zoonotic, meaning they are transmitted between animals and people. Detailed investigations found that SARS-CoV was transmitted from civet cats to humans and MERS-CoV from dromedary camels to humans. Several known coronaviruses are circulating in animals not yet infected humans. Common signs of infection include respiratory symptoms, fever, cough, shortness of breath, and breathing difficulties. In more severe cases, infection can cause pneumonia, severe acute respiratory syndrome, kidney failure and even death. Standard recommendations to prevent infection spread include regular hand washing, covering mouth and nose when coughing and sneezing, thoroughly cooking meat and eggs (22). Today, coronavirus is spread around the world. Globally, on 17th Mar 2020, there were 179 111 confirmed cases and 7426 deaths (23).

Responses to coronavirus from the criminal laws in Europe

Numerous states have closed their borders, quarantining their nationals that entering in the state. From the other side, a stranger cannot enter the European Union, but the same situation is in the other countries that try to combat this disease. However, many do not abide by the restrictions, and people who have become ill with coronavirus walking the streets. Many are committing a criminal offence. For example, a patient in Bosnia and Herzegovina at the hospital refused to tell that he had returned from Italy, so he infected the entire hospital, starting with the doctors (24).

Criminal laws in Europe are very different. We have singled out several legislations in countries where coronavirus is quite widespread. However, in every country, there are specific rules that govern the behavior of people during an epidemic. This is particularly true when we speak on coronavirus. At this point, every criminal can be committed intentionally or negligently. Moreover, negligence differs from recklessness (25). This is particularly the case when we talk about the transmitting of dangerous contagious diseases such as coronavirus (26). Due to the volume of this work, we cannot explain all European legislations. Therefore, we will start our discussion with the criminal offences in the Scandinavian countries, after which we will explain legislation in some other European countries.

Transmitting dangerous contagious disease in Scandinavian countries

Criminal codes of Norway, Sweden, Finland, and Denmark incriminate transmitting dangerous contagious disease. In the first place, the Penal Code of the Kingdom of Norway (27) consists of two criminal offences. The legislator in Section 237 prescribes transmission of a communicable disease in the following way and a penalty of a fine or imprisonment for a term not exceeding three years shall be applied to any person who infects or exposes another person to a risk of infection with a communicable disease hazardous to public health. No penalty applies when a person infected with a sexually transmitted disease or been exposed to a risk of such infection is the spouse or cohabitant of the person transmitted the infection or exposed the person in question to the risk of infection and the spouse or cohabitant has consented in advance to being exposed to such risk. The penalty for negligent transmission of a communicable disease is a fine or imprisonment for a term not exceeding one year. In Section 238 the legislator prescribes an aggravated transmission of a communicable disease. The penalty for aggravated transmission of a communicable disease is imprisonment for a term not exceeding six years. In determining whether the transmission of a communicable disease is aggra-

vated, particular weight shall be given to whether it has resulted in a) the general spread of the disease or a risk of such spreading, or b) loss of life or considerable harm to body or health. The penalty for negligent aggravated infection is imprisonment for a term not exceeding three years.

Criminal Code of Denmark (28) in Paragraph 192 prescribes that any person who, by a contravention of the provisions laid down by law or in pursuance of law for preventing or combatting a contagious disease, brings about the danger that such a disease will reach or spread among the public shall be liable to imprisonment for any term not exceeding three years. If the disease is of such a nature that, under the law, it shall be liable to public treatment or at the time of the committing of the act it is in fact being so treated, or if special measures have been taken against its introduction into the state, the penalty shall be imprisonment for any term not exceeding six years.

Swedish legislator in Section 7 of Chapter 13 of the Criminal Code (29) introduces criminal offences for transmitting contagious diseases. According to this legal solution, a person who occasions a public danger to human life or health by poisoning or infecting food, water or something else, by spreading poison or similar in some other way, or by transmitting or spreading a serious disease is guilty of spreading poison or infection and is sentenced to imprisonment for at most six years. If the offence is gross, the sentence is imprisonment for a fixed term of at least four and at most eighteen years, or life. When assessing whether the offence is gross, particular consideration is given to whether it was committed with intent to harm the life or health of another person, or whether many people were exposed to danger.

Finally, Criminal Code of the Republic of Finland (30) incriminates in Chapter 34 endangerment to health and aggravated endangerment to health, which is very heterogeneous offence. Therefore, a person who 1) by poisoning or by another comparable manner renders foodstuffs or other substances intended for human consumption or use dangerous to health, or keeps such dangerous

substances available to others, 2) spreads a dangerous disease, 3) operates a radiation source in violation of the Radiation Act, 4) uses nuclear energy or nuclear waste or acts in the use of nuclear energy in violation of the Nuclear Energy Act, 5) uses organisms altered through genetic technology in a closed environment or intentionally spreads organisms altered through genetic technology into the environment, in violation of the Genetic Technology Act so that the act is conducive to causing general danger to life or health, shall be sentenced for endangerment of health to imprisonment for at least four months and at most four years. An attempt is punishable. Additionally, if the endangerment of health is committed so that danger is caused to the life or health of a great number of people and the offence is aggravated also when assessed as a whole, the offender shall be sentenced for aggravated endangerment of health to imprisonment for at least two and at most ten years. The attempt is punishable here, too.

Transmitting dangerous contagious disease in Czech Republic, Bulgaria and Hungary

Criminal Code of the Czech Republic (31) for spreading human diseases prescribes two criminal offences: spreading of contagious human disease and negligent spreading of contagious human disease. According to Section 152, whoever intentionally causes or increases the danger of importation or spread of infectious human disease shall be sentenced to imprisonment for six months to three years, to prohibition of activity or confiscation of a thing or other asset value. An offender shall be sentenced imprisonment for two to eight years, if he/she a) commits one or more of the mentioned acts as a member of an organized group, b) commits such an act in the state of state of national peril or a war state, natural disaster or another event seriously threatening life or health of persons, public order or property, c) breaches by such an act an important obligation arising from his/her employment, occupation, position or function or imposed by Law, or d) causes by such an act grievous bodily harm. Firstly, an offender shall be sentenced to impris-

onment for three to ten years, if he/she causes grievous bodily harm to at least two persons, or death. Secondly, the offender shall be sentenced to imprisonment for five to twelve years, if he/she causes death of at least two persons. Preparation for this criminal offence is punishable. Section 153 is devoted to the negligent spreading of contagious human disease. Therefore, whoever causes or increases the danger of importation or spread of an infectious human disease out of negligence, shall be sentenced to imprisonment for up to one year, to the prohibition of the activity or confiscation of a thing or other asset value. An offender shall be sentenced to imprisonment for six months to three years, if he/she a) commits the act in the state of national peril or a state of war, natural disaster or another event seriously threatening life or health of persons, public order or property, b) breaches by such an act an important obligation arising from his employment, occupation, position or function imposed by Law, c) causes by such an act grievous bodily harm. The offender shall be sentenced to imprisonment for one year to six years, if he/she a) causes death, or grievous bodily harm. The offender shall be sentenced imprisonment for two to eight years if he/she commits because he grossly breached the Laws on protection of public health and the offender shall be sentenced to imprisonment for three to ten years, if he/she causes death of at least two persons because he/she grossly breached the Laws on protection of public health. In Section 154, additionally is prescribed that the Government shall determine by a regulation, what shall be understood as contagious human diseases.

Bulgarian legislator in Criminal Code (32) prescribes in Article 355 that a person who violates regulation issued against the spreading or occurrence of contagious disease affecting humans shall be punished by probation or by a fine from BGN one hundred to three hundred. If the act has been committed at the time of epidemic, connected with cases of death, the punishment shall be imprisonment for up to one year or probation. A person, who violates regulation issued for prevention of food poisonings, shall be pun-

ished by probation or by a fine of up to from BGN one hundred to three hundred.

Hungarian legislator (33) incriminates violation of epidemic control regulations in Section 361. According to this legal solution, any person who: a) infringes the rules of quarantine, epidemiological supervision or control ordered for preventing the importation or dissemination of an infectious disease subject to quarantine obligation; b) infringes the rules of quarantine, epidemiological supervision or control ordered at the time upon the outbreak of a disease; c) breaches the measures adopted by the plant health authority or epidemiological measures introduced for the prevention of the spreading - within or across the border - of infectious animal diseases or pests which are harmful to vegetation, or for the eradication of such; is punishable for misdemeanor by custodial arrest.

Transmitting dangerous contagious disease in Balkan countries

In Serbian legislation the legislator provided criminal offences in articles 248 and 249 of the Criminal Code (34). In the first place, whoever during an epidemic of a dangerous contagious disease fails to act under regulations, decisions or orders setting forth measures for suppression or prevention thereof, shall be punished by fine or imprisonment up to three years. Secondly, whoever fails to act according to regulations, decisions or orders for suppression or prevention of contagious disease and thereby a contagious disease is transmitted, shall be punished by imprisonment up to three years.

Croatian Criminal Code (35) prescribes just one offence, but it is a much detailed that Serbian one. This offence is titled in Article 180 as *Spread and Transmission of Contagious Diseases* and prescribes that whoever fails to comply with regulations or orders of the competent state authority ordering check-ups, disinfection, disinsectisation, deratisation, quarantining of patients or another measure for the prevention and suppression of infectious diseases among people or the prevention and suppression of infectious animal diseases also contracted by people and where conse-

quently the danger of spreading an infectious disease among people or the transmission of the infectious disease from animals onto humans occurs, shall be punished by imprisonment not exceeding two years. Additionally, whoever by not complying with the measures of protection infects another person with a dangerous infectious disease shall be punished by imprisonment not exceeding three years. The criminal offence, where it concerns a sexually transmitted disease, shall be prosecuted at the injured party's request unless the criminal offence was committed against a child. If this criminal offence is committed by negligence, the perpetrator shall be punished by imprisonment not exceeding one year.

In Criminal Code of Montenegro (36), in Article 287 is prescribed non-compliance with health regulations aimed at suppressing dangerous communicable diseases. In this country, whoever does not comply with regulations, decisions, orders or instructions ordering measures for the suppression or prevention of a dangerous communicable disease shall be punished by a fine or a prison sentence for a term not exceeding one year. In Article 288 we can find incriminated spreading dangerous communicable diseases and whoever does not comply with regulations, decisions, orders or instructions for the suppression or prevention of a dangerous communicable disease due to which the disease concerned is spread shall be punished by a prison sentence for a term not exceeding three years. These legal solutions in Montenegro are quiet similar to Serbian.

Bosnia and Herzegovina have four similar criminal regulations because this country has four legislations (Bosnia and Herzegovina, Federation of Bosnia and Herzegovina, Republic of Srpska, and Brčko District (9)). Criminal Code of Republic of Srpska (37) is very severe and consists of three criminal offences, prescribed in Articles 194, 195 and 196. In Article 194 is prescribed transmitting a contagious disease. In the first place, whoever fails to comply with any regulation or ordinance whereby a competent health care body orders medical examinations, disinfecting, quarantine or other measures designated to suppress or prevent the spread of any contagious disease in human

beings, and in so doing causes the contagious disease to be transmitted, shall be punished by a fine or imprisonment for a maximum term of two years. This punishment shall be similarly imposed on any person who, by failing to comply with any regulation and ordinance designated to suppress and prevent the spread of any contagious diseases in animals, causes a contagious disease to be transmitted to people. If an incurable contagious disease is transmitted by an offence, the offender shall be punished by imprisonment for a term of between one and ten years. If any mentioned criminal offence is committed through negligence, the offender shall be punished by a fine or imprisonment for a maximum term of one year. However, if any criminal offence results in grievous bodily harm or serious impairment of the health of one or more persons, the offender shall be punished by imprisonment for a term of between one and eight years and a maximum term of three years for the offence, depending on the form of the criminal offence. If any criminal offence results in the death of one or more persons, the offender shall be punished by imprisonment for a term of between two and twelve years, for a term of between two and fifteen years and a term of between one and eight years, depending on the form of the criminal offence.

Secondly, it is incriminated failure to comply with sanitary regulations during an epidemic. Whoever, at the outbreak of an epidemic or a contagious disease, fails to comply with any regulation, ordinance or decision which establishes measures for its suppression or prevention, shall be punished by a fine or imprisonment for a maximum term of two years. This punishment shall also be imposed on anyone who, at the time of an epidemic of a contagious animal disease transmissible to people, fails to abide by the regulations, ordinances and decisions which order measures for its suppression or prevention. If any mentioned offence has been committed through negligence, the offender shall be punished by a fine or imprisonment for a maximum term of one year.

Thirdly, this legislator incriminates failure to apply measures for prevention of contagious dis-

eases. This is unique solution between all described countries. Whoever, in any hospital, maternity hospital, boarding school, school, company, other statutory institution, retail food outlet, cleaning services, or in a similar organization or establishment, in contravention of sanitary regulations, fails to apply hygienic measures or employs or keeps in his employment any person suffering from a contagious disease, thereby causing the transmission of such contagious disease, shall be punished by a fine or imprisonment for a maximum term of one year. If any offence is committed through negligence, the offender shall be punished by a fine or imprisonment for a maximum term of six months, but if any criminal offence results in grievous bodily harm or serious impairment of the health of one or more persons, the offender shall be punished by imprisonment for a term of between one and five years for the criminal offences and a maximum term of three years, depending on the form of the criminal offence. If any criminal offence results in the death of one or more persons, the offender shall be punished by imprisonment for a term of between two and twelve years and a term of between one and eight years.

Criminal Code of the Federation of Bosnia and Herzegovina (38) contains two criminal offences, prescribed in articles 225 and 226. In Article 225 this legislator prescribed transmitting a contagious disease. Whoever fails to comply with any regulation or ordinance whereby a competent healthcare body orders medical examinations, disinfection, quarantine or other measure designed to suppress or prevent the spread of any contagious disease in human beings and in so doing causes a contagious disease to be transmitted, shall be punished by imprisonment for a maximum term of one year. The liability to punishment shall be similarly imposed on any person who fails to suppress or prevent the spread of a contagious disease in animals and thereby causes transmitting of the disease to human beings. And, whoever commits any offence through negligence shall be punished by a fine or imprisonment for a maximum term of six months. In Article 226 we can find failure to comply with sani-

tary regulations during an epidemic. Whoever, at the outbreak of an epidemic of a contagious disease, fails to comply with any ordinance or decision made based on the regulations of competent institution which establishes measures for its suppression or prevention shall be punished by imprisonment for a maximum term of one year.

Conclusion

European countries have prescribed criminal offences for spreading and transmitting dangerous contagious diseases in their legislations. However, this could be just a dead letter. Criminal proceedings in numerous countries are long-lasting and connected with the difficulties in proving criminal of the criminal offence. Therefore, it can be a problem in the case of coronavirus. Theoretically speaking, every criminal offence that we have explained in this article covers a wide area of possible criminal acts. Problem with the coronavirus will inevitably be establishing a connection between acts and consequences, between the behavior of a person infected with the coronavirus and the illness of somebody new. Maybe this will be one of the fields where the criminal law will show a new failure. However, this is a question without answer today. In our opinion, persons who contributed to the spread of the coronavirus must be held criminally responsible. It is not an issue of the intentionally or negligently spreading, because every type of person's conduct has to be punishable.

Ethical considerations

Ethical issues (Including plagiarism, Informed Consent, misconduct, data fabrication and/or falsification, double publication and/or submission, redundancy, etc.) have been completely observed by the authors.

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Conflict of interest

The authors declare that there is no conflict of interest.

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