

УДК 343.6

Peculiarities of Qualification of Crime Provided for in Clause 125 of the Russian Federation Criminal Code (failure to render aid to persons in danger) and its Co-Relation with Other Crimes

Tatyana V. Dolgolenko and Andrey A. Kondrashov*

Siberian Federal University

82 Svobodny, Krasnoyarsk, 660041 Russia¹

Received 11.07.2011, received in revised form 15.11.2011, accepted 28.12.2011

The article covers the indicia of the failure to render aid to persons in danger, the crime provided for in Clause 125 of the Russian Federation Criminal Code and its co-relation with crimes provided for in Clauses 105, 111, 264 of the RF Criminal Code.

Keywords: failure to render aid to persons in danger, endangering, health and life threatening condition, murder, negligent crime.

Viewpoint

Occurrence of corpus delicti provided for in Clause 125 of the RF Criminal Code (failure to render aid to persons in danger) makes it evident that a human being has always been and remains a supreme value in a society and no welfare is protected at the criminal law level at the same degree as a human life, which is quite natural and law-governed.

Existence of such a responsibility complies with the laws of creation and truth: treat another person the same way you want to be treated. Liability for failure to render aid to persons in danger is known in penal legislation of Russia since the Council Code of Tsar Alexis dated 1649. And since then it has immutably existed in all legislative sources of the criminal law

of the state of Russia. The criminal legislation of the majority of foreign states also contains norms of responsibility for the failure to render aid to persons in danger. In Clause 125 of the RF Criminal Code (Enactment of Federal Law dated December 8, 2003, No. 162-ФЗ) the sanction is emended with one more penal measure – imprisonment for up to one year, which underlines the increased community danger of the failure to render aid to persons in danger in the present-day reality. If considered that each year more and more people address for help to baby-sitters and nurses signing agreements under which they may become a subject of a crime provided for in Clause 125 of the RF Criminal Code, enforcement of criminal liability is reasonably justified.

* Corresponding author E-mail address: lawsfu@mail.ru

¹ © Siberian Federal University. All rights reserved

The long history of the failure to render aid to persons in danger liability record does not eliminate the problem of distinction between this intentional offence with formal elements of a crime and other crimes, such as murder and intentional infliction of harm to health, as the failure to render aid to persons in danger can be used by a guilty as a means of commission of the latter. The failure to render aid to persons in danger can also be the means of non-adults abuse in criminal default of their upbringing (Clause 156 of the RF Criminal Code). Besides, there is a problem of determining a possibility to qualify the failure to render aid to persons in danger in the aggregate with other crimes. And this in particular is the problem the law enforcement officials occasionally encounter. Legislative construction of Clause 125 of the RF Criminal Code and the Plenum of the Supreme Court resolution "On Judicial Practice on Crimes Connected with Traffic Safety Rules and Means of Transport Exploitation Violations along with Transportation Misappropriation with No Intent of Stealing" dated December 9, 2008, provide us with some of the reference points needed, although not in full.

Specificity of the failure to render aid to persons in danger crime is that it can be committed with express malice only, which is common for many crimes with formal elements. From the objective side it is characterized by inaction of two types: inaction – non-interference, when a person is obliged to act by operation of law or other normative act; and inaction, preceded by an act committed by the same person, causing life and health threatening condition of a victim. It is necessary to consider the peculiarities of these two types of inaction at the moment of a crime commitment, provided for in Clause 125 of the RF Criminal Code, and to differentiate them from other crimes.

Underintentional inaction–non-interference, if it is not preceded by endangering by the same

individual, the injury received by a victim is a result of the third parties influence, forces of nature or other reasons, not dependant on the will of a guilty. In these cases three circumstances have to be established. Firstly, whether the individual under any normative act (law, by-law, agreement) had an obligation to render aid to a victim and whether he/she was conscious of this obligation. Secondly, whether the individual was able to render aid to a victim, and whether he/she was conscious of this possibility. Thirdly, whether the defendant realized the condition of a victim as life- and health-threatening, as well as the victim's inability to take measures for self-preservation because of being helpless, on condition that the defendant had no wish of, nor conscious implying, nor indifferent attitude towards the possible consequences (death, grievous harm to health). Speaking about this type of inaction, only if all the three abovementioned circumstances are present, can the defendant be considered liable under Clause 125 of the RF Criminal Code. Thus, in determination made by the Judicial Board on Criminal Cases of the Supreme Court of the RF dated April 3, 2002, with regard to Grigoryev's case it was ascertained that he had no obligation to take care of Tatarinov (the victim), and the latter was endangered not because of his guilty actions, as Grigoryev did not leave him alone. The convict had all reasons to believe that the third party present at the scene of action would make fire and stay with the victim, which meant that he was under delusion about the absence of threat to Tatarinov's life. This circumstance also excludes liability as provided for in Clause 125 of the RF Criminal Code.¹

If under the afore-mentioned conditions the individual willfully does not interfere into the evolvement of the causation, although being conscious of such possibility, wishing for the death of a victim or purposely allowing it to take place, or showing indifference towards its

occurrence, and if such a sequence does take place – then the given criminal act is qualified as a homicide. If the intent of a guilty is to cause health damage to a victim resulting from the failure to render aid – then the offence is qualified as an intentional infliction of harm to health. (Clause 111 or Clause 112 of the RF Criminal Code). If such consequences do not occur, then the offense qualification depends on the kind and content of the intent. If express malice takes place – then the offense is qualified as attempted murder or attempted health damage. If there is implied malice to kill or to cause health damage, the qualification of the offence depends on the actual consequences. If in these cases no consequences occurred, then a guilty should be held criminally liable for the failure to render aid to persons in danger. Consequently, the line between the failure to render aid to persons in danger and homicide or intentional infliction of harm to health, caused by inaction – non-interference, can be drawn depending on the degree of the possibility to foresee the consequences and willfulness of the intent (presence or absence of the wish for, purposeful allowing of or indifferent attitude towards the concrete consequence). The problem of distinction of these crimes arises only when the objective criterion (obligations) and the subjective criterion (possibilities) of rendering aid to a person in life or health threatening situation are available.

Under another type of the failure to render aid to persons in danger, its objective part is contained not only in inaction, but also in preceded actions committed by the defendant causing the life and health threatening condition of a victim. Exposing to danger can be either done with the intent or by negligence or even innocently. In these cases the problem of distinction between the failure to render aid to persons in danger and homicide and intentional infliction of harm to health takes place only if endangering is intentional. In these

instances establishment of the form and content of the guilt at the very moment of endangering is very important for correct qualification. Thus, it is unlikely that one should share the viewpoint expressed in the educational materials on the case when a mother leaves a newborn on a winter night at neighbors' doorstep, and the newborn dies of hypothermia, that her inaction definitely contains formal elements of the failure to render aid to persons in danger crime according to the present Criminal Code of the RF.² Similar inaction leading to the death of a victim can also be qualified as a homicide with implied malice. First of all, the circumstances of endangering (the clothes the baby wore, the measures taken by the mother to prevent the baby from freezing) as well as the mental state of the mother, her ability to recognize the threat to the baby's life which she posed herself, can tell about the form and content of the guilt. If the baby received timely aid from a third party and no damage was done to the health as a result of endangering, if the mother had no express malice to kill or inflict harm to the baby's health, then only the failure to render aid offence can be definitely incriminated. The failure to render aid to persons in danger can be found only if no other grievous aforethought offence aimed against the life or health of a victim takes place. The question of correlation of the failure to render aid offence and default on one's obligations to bring up a non-adult offence is also of interest (Clause 156 of the RF Criminal Code). The subject of the latter crime is a specific one: it is a parent or another person obliged to bring up a non-adult, a teacher, an employee of an educational, fostering, medical or other institution, obliged to exercise supervision of non-adults. The mental element of the crime presumes express malice. The main direct target of this crime is normal physical, moral and spiritual development of a non-adult. The objective side evolves from non-execution or improper execution of obligations

to bring up a non-adult together with his/her abuse. The failure to render aid, connected with endangering of a non-adult, can be one of the means of abuse, for instance, deprivation of food or water or clothes, if this is the cause of the existing life or health threatening condition of the victim. Systematic character (although this is not mentioned in the law, it becomes evident from the logical interpretation of the norm disposition) of non-execution or improper execution of one's obligations to bring up a non-adult connected with the abuse give grounds to be liable under Clause 156 of the RF Criminal Code. The crime provided for by Clause 156 of the RF Criminal Code is a more serious crime compared to those provided for by Clause 125 of the RF Criminal Code. A single abuse of a non-adult causing a threat to life and health of a victim followed by the failure to render aid by the abovementioned persons (provided that the fulfillment of their implied duties is not of systematic nature) results in a crime provided for in Clause 125 of the RF Criminal Code. For instance, the district court of Novosibirsk accused P. of the failure to render aid and battery (Clause 125 and Part 1 of the Clause 116 of the RF Criminal Code). Having beaten his three year old son, he tied him up with a lace to a non-operating stall and left. The boy was taken to the hospital for the emergency medical assistance by the next door neighbors.³ In this instance, the qualification of the battery under Clause 116 of the RF Criminal Code is of a question. Did actual aggregate of the two crimes, the failure to render aid and the battery, take place in this case? To answer this question it should be found out by what particular actions the danger was imposed. The battery, with liability provided for in Part 1 of Clause 116 of the RF Criminal Code, and intentional infliction of minor harm to health, with liability provided for in Part 1 of Clause 115 of the RF Criminal Code, are less serious crimes compared to the failure to render aid to

persons in danger, which is proved by the penalty measures stipulated for these crimes. It seems that commitment of these crimes can be covered by endangering offence provided that all the other indicia of the failure to render aid to persons in danger under Clause 125 of the RF Criminal Code take place. Supplementary liability for the battery (Part 1 of Clause 116 of the RF Criminal Code) and intentional infliction of minor harm to health (Part 1 of Clause 115 of the RF Criminal Code), in such cases is overcharge. A common mistake in court rulings is holding criminally liable for cumulative crime that is for both the failure to render aid to a victim and intentional infliction of grievous harm to health. For example, the Presidium of the Supreme Court of the RF stated in the court decision on the case of B. dated May 31, 2006: "As follows from the case materials, Bessonov put another person into life or health threatening condition as a result of intentional infliction of grievous harm to health dangerous to the person's life. His malicious actions cannot be additionally qualified under Clause 125 of the RF Criminal Code, as they are completely covered by the body of the crime provided for in Part 4 of Clause 111 of the RF Criminal Code"⁴. Similar mistakes of law enforcement officials can be avoided, if Clause 125 of the RF Criminal Code is emended with endangering, if it is done intentionally, but there are no indicia of a more serious intentional crime committed equally by negligence or innocently.

In case of the criminal failure to act after unintended endangering there can be double jeopardy: for the failure to render aid to persons in danger and for endangering. The necessity of such classification is repeatedly underlined by the Supreme Court concerning particular cases and besides, by the mentioned above Transport Crime Act. The mistaken classification there can be caused by erroneous interpretation of conscience of the condition of a victim by a liable party.

The paragraph 19 of the Plenum of the Supreme Court of the Russian Federation enactment dated December 9, 2008 “Court Practice on Crimes Connected with the Traffic Safety Rules and Means of Transport Exploitation Violations along with Transportation Misappropriation with No Intent of Stealing ” states: “Imputed knowledge of the failure to render aid to persons in danger means that the driver recognized the life and health threatening condition of a victim having no possibility to seek medical attention by himself/herself because of infancy, old age, illness or disability (for example in case of kick-and-run driver who did not call an ambulance, did not take the victim to the hospital, etc.)”. As an example: Judicial Penal Division of the Khakassia Republic Supreme Court in its Cassational Ruling, dated June 23, 2004, concerning the case involving P. accused under the Part 2 of Clause 264 of the RF Criminal Code stated: the circumstances of the case proved by the court showed that victim D. died on the scene of a road accident, and the accumulative grave bodily injury caused as a result of traffic rules violation by P. was fatal. Based on this fact the judicial board ruled that there were no elements of crime in P.’s action provided for by Clause 125 of the RF Criminal Code RF.⁵ Law enforcement officials interpret Clause 125 of the RF Criminal Code differently and in other criminal cases use the same reasoning to accuse of a crime under this Clause. But if a person having committed a traffic rules violation is conscious of a victim’s life and health threatening condition and his/her inability for self-preservation as a result of being feeble, while the person is able to render aid but does not, he is liable not only for the road traffic accident, but also for the failure to render aid to persons in danger. But even if a victim dies on a scene of a road traffic accident as a result of it, that does not prove absence of a criminal act, provided for in Clause 125 of the RF Criminal Code. By-passing drivers should

not assess whether a victim will live or not and how much time is left, but is required to render possible aid depending on a situation, in most cases – to call for an ambulance. Only if a victim dies at the very moment of a road traffic accident, then there can be no liability under Clause 125 of the RF Criminal Code as the object of a crime – a person’s life and health – is absent. But a driver has to verify that the victim is not able to use any help any more. As follows from judicial and investigative practice, in many cases lethal outcome could have been avoided if medical assistance was timely given. It seems reasonable to recall Clause 125 of the RF Criminal Code to the wording of Clause 127 of the RSFSR (the Russian Soviet Federative Socialist Republic) Criminal Code in part of determination of responsibility for the failure to inform appropriate persons and institutions of the necessity to render aid to a victim. Besides, current legislation does not provide for the motivation of drivers having committed the road traffic accidents to render this aid to a victim. When they run away from the scene of an accident leaving a victim in danger, they try to avoid criminal liability under two clauses of the RF Criminal Code. The law is considered to be aimed at delivery of an emergency action to a traffic accident victim, at health and life saving, owing to proper medical assistance. It is necessary to provide by law for privileged elements of traffic rules and transport means violations committed by a person who rendered aid to a victim (victims) on time and in full.

Under Clause 125 of the RF Criminal Code Federation criminal responsibility for the failure to render aid to persons in danger is imposed even if endangering is innocent. Thus, a driver striking a passer-by who has violated the traffic rules must be charged of the failure to render aid to persons in danger if other criteria of Clause 125 of the RF Criminal Code are also available.

Conclusion

The proper application of Clause 125 of the RF Criminal Code is considered to be of great educational importance. Both the cases of this norm application and the cases of providing

assistance at the scene must be reflected by the mass media. The amendments proposed for Clause 125 of the RF Criminal Code will result in errors elimination in its enforcement and legal practice.

¹ See: Bulletin of the Supreme Court of the Russian Federation, 2003, No. 4 P. 10-11.

² See: The Full Course of Criminal Law in Five Volumes. Under Edition of Doctor of Legal Sciences, Professor, Honored Science Worker of the RF A.I. Korobeyev. V.2 Crimes Against Person. Saint-Petersburg Law Center Press 2008, P.400.

³ <http://www.forum-tvs.ru/index.php?s=7146a5bed03bed05a2ea435e97faa1d9&showtopic=18568&st=0&p=567230&#entry567230>

⁴ See: Bulletin of the Supreme Court of the Russian Federation, 2007, No. 6 P.7

⁵ See: Cassational Ruling of the Supreme Court of the Republic of Khakassia No. 22-728/2004 dated June 23, 2004

References

Bulletin of the Supreme Court of the RF, 2003, No. 4.

The Full Course of Criminal Law in Five Volumes. Under Edition of Doctor of Legal Sciences, Professor, Honored Science Worker of the RF A.I. Korobeyev. V.2 Crimes against Person. Saint-Petersburg Law Center Press 2008, P.400.

<http://www.forum-tvs.ru/>

Bulletin of the Supreme Court of the Russian Federation, 2007, No. 6 P.7

Cassational Ruling of the Supreme Court of the Republic of Khakassia No. 22-728/2004 dated June 23, 2004.

Особенности квалификации преступления, предусмотренного статьей 125 УК РФ (оставления в опасности) и его соотношение с другими преступлениями

Т.В. Долголенко, А.А. Кондрашов
*Сибирский федеральный университет
Россия 660041, Красноярск, пр. Свободный, 82*

В статье рассматриваются признаки оставления в опасности – преступления, предусмотренного ст. 125 УК РФ и его соотношение с преступлениями, предусмотренными ст. ст. 105 УК РФ, 111 УК РФ, 264 УК РФ.

Ключевые слова: оставление в опасности, поставление в опасность, опасное для жизни и здоровья состояние, убийство, неосторожное преступление.
