

Civil liability for interventions related to human reproduction - the concepts of wrongful life and wrongful birth

Abstract

In this thesis, the author tries to give a comprehensive view of the issue of civil liability of health care facilities, or doctors, which arises as a result of non lege artis procedure in performing procedures and providing services that negatively affect human reproduction. In such cases, the persons concerned have the opportunity to defend themselves by means of actions for which the name wrongful birth and wrongful life has been adopted almost all over the world.

In the first part of this thesis, the author discusses the most commonly used methods that help to affect human reproduction, and also gives examples of incorrect procedures in their provision. These may very often result in the filing of the above-mentioned lawsuits. At the same time, the author gives a basic description of wrongful birth and wrongful life lawsuits and a list of the main reasons, pros and cons of their approval and further recognition.

The second part is devoted to the legislation in the Czech Republic. The author deals with the regulation of human rights, which are often affected only in the provision of health services, as well as the regulation of liability in general. Another part then focuses mainly on civil liability, its origin, types and methods of satisfying claims for damages. The second part is further devoted to the lege artis procedure and its enshrining and conception in Czech legal norms, especially in Act No. 372/2011 Coll. on health services and conditions of their provision (Act on Health Services). Since the legal regulation does not deal with the concepts of lawsuits wrongful birth and wrongful life, the author tries to give a comprehensive picture of the basic institutes on which the lawsuits are based. Last but not least, the author gives examples of cases concerning wrongful birth and wrongful life lawsuits, which ended up at the highest courts of the Czech Republic. At this very point, it is crucial to enable a peek to the issue of how difficult it is for the Czech courts - as well as the others concerning various parts of the world - to decide on such controversial lawsuits.

In the third part, the author deals with the case law of selected foreign countries such as Israel, the United Kingdom, Australia and the United States. In such environment, we notice that some states directly regulate these institutes by their own laws. Nevertheless, the view on this issue is not uniform and the opinions of the courts differ tremendously from country to country. Sometimes, however, we encounter a substitution of views of the courts of one state over the years.

Finally, the last part provides a comparison and overview of individual approaches, where the author wanted to demonstrate how demanding it is to decide in such cases.