

The Doctrine of Loss of Chance and its application in the Czech Law

Abstract

This thesis diploma deals with the civil law doctrine of "loss of chance" that addresses the issue of proving causation in medical-legal disputes. The author of the thesis has defined the following research question: "*What is the position of the Supreme and Constitutional Court of the Czech Republic regarding the application of the doctrine of "loss of chance"?*" The primary aim of this thesis is to evaluate the approach to the doctrine of "loss of chance" within the legal system of the Czech Republic by critically analysing the relevant case law of the Supreme Court and the Constitutional Court of the Czech Republic. This thesis discusses the development in the views of these judicial institutions on the application of the doctrine and also describes the approaches of foreign judicial practices to the application of the doctrine of "loss of chance". The thesis also points out certain mistakes that are often made by courts in the interpretation of "loss of chance" doctrine, which may lead to a rejecting of the doctrine. Finally, the paper summarizes the positive and negative aspects of the doctrine.

The thesis consists of three parts. The first part provides a theoretical definition of the doctrine of "loss of chance" and points out the main differences between the doctrine and the classic concept of liability for damages and the probabilistic proportional approach. This part also describes certain foreign cases in which the doctrine has been applied, while providing insight into the possible application of the doctrine in areas different from health care delivery. The second part is focused on the analysis of the relevant decisions of the Supreme Court and the Constitutional Court. In this section, the approach of the jurisprudence of the United Kingdom and the United States of America to the application of the doctrine is outlined. The third part of this thesis provides a summary of the various positive and problematic aspects of the doctrine.

In its conclusion, the thesis finds the following answer to the defined research question: The approach of the Supreme Court and the Constitutional Court to the doctrine is inconsistent, ambiguous, contradictory and restrained. The specific findings resulting from the analysis of the relevant decisions and the answers to the other sub-objectives of this thesis are contained in the conclusion of this thesis.

Key words: loss of chance, legal liability, medical-legal disputes