

The Theory of "Loss of Chance" in the Field of Medical Law

Abstract

This master's thesis explores an alternative approach to establishing civil liability in medical-legal relationships. Due to the disparities described in the thesis, the positions of the parties in medical-legal disputes are not equal. Therefore, the theory of "loss of chance" was developed to address this issue by introducing a new approach to proving causal connection in court. The point of the theory is to transfer the procedural deficiencies of the aforementioned disputes into the substantive realm by creating a new legally protected asset, namely, the "chance."

The thesis is divided into three parts. The first part addresses the issues of medical-legal relationships and the resulting legal disputes. It explains the fundamental principles underlying the theory of "loss of chance" and highlights the differences between the conventional approach to proving causal nexus and the theory itself. The second part is devoted to the historical and foreign development of the theory. With the help of key decisions of foreign case law, the concept of theory in these foreign jurisdictions is explained, which then influences the decision-making of Czech courts in cases related to theory. The last part of the thesis deals primarily with the main question of the thesis whether the theory of "loss of chance" according to the case law of the Supreme and Constitutional Courts can be an applicable tool in the Czech legal system. Critical analysis is applied to significant decisions of the top Czech judicial institutions that have addressed cases related to the theory. Through selected court rulings, the approach of the Czech judiciary towards the theory is presented.

Through the examined decisions it is evident that the courts were not able to fully apply the theory of "loss of chance" in its doctrinal concept at the beginning. This approach is most likely based on the courts' initial reluctance to analyse the theory in depth. The Czech judiciary, at the time of writing, takes a negative view of the theory. According to the Supreme Court, the theory in its doctrinal form is incompatible with the Czech legal order. However, this does not mean that the Czech judiciary will not have to deal with the theory or its derivatives again.

Keywords: unequal position in medical-legal disputes, chance, causality