Abstract

This diploma thesis goes into a problem of the legal interpretation of the term *lex artis*, which some authors describe as well-known term of unknown content. Generally, this term relates to the activities of doctors and other health care professionals within taking care of patients, and usually we can meet with the ablative *lege artis*, which is used to denote a professionally correct action. This term is in common usage also in the reference books and case law where the breach of the duty to act *lege artis* is considered to be a precondition for liability of physician or health care provider for injury to the patient. Certain difficulty of using the term *lex artis* lies in the fact that the legislation in force does not mention not even define this term and its meaning must therefore be inferred from legislation by interpretation.

For the legal definition of *lex artis* is from 1st April 2012 considered the provision of s. 4 (5) of Act No. 372/2011 Sb., about Health Services and Terms (the Health Services Act), as amended, which defines appropriate professional standard of providing health services and which is from the early beginning criticized by the part of professionals for its alleged conflict with patients' rights guaranteed by the Convention on Human Rights and Biomedicine.

The aim of this thesis is to determine the concept of *lex artis* and evaluate the possibilities of its interpretation through the analysis of legislation, non-legal regulations and relevant case law with regard to the aforementioned critical attitudes. Attention is paid to national legislation as well as international legislation; *de lege ferenda* legislation contained in the new Civil Code is also taken into consideration.

The text is divided into seven chapters. In the first chapter basic legal terms are defined with regard to the changes in legal terminology after the enactment of the Health Services Act. The following chapter contains an overview of legal and also non-legal rules that are also very important for determination of the specific content of *lex artis*. Other chapters are already focused on the interpretation of *lex artis* and its attributes as well as the related concepts of *non lege artis* and *vitium artis*. Attention is also paid to the relatively new double conception of *lex artis*, which distinguishes between the concept of *lex artis* in the restrictive medical sense and the concept of *lex artis* in the extensive medico-legal sense. Selected procedural aspects related to the concept of *lex artis*, especially aspects of proving *lege artis* action and *non lege artis* action in medico-legal disputes were also included in the text, also with a brief insight into German law. The final chapter describes the Dutch provision of standard of providing health care and compares it with Czech legislation.

Legislation of the Netherlands was not chosen randomly, but with regard to the fact that it became the model for a new provision of the health care contract in the new Civil Code, which will regulate the relationship between the health-services provider and the patient within providing health care.