Abstract

The aim of this work was to introduce the loss of chance theory, to research its theoretical grounds and to find out whether it would be possible to apply the theory in the Czech law system and whether such application would be beneficial. Since the theory was first applied in common law system, I have decided to use some cases from the past and show the way the theory evolved and how the courts justified its application. Reflecting on cases from various jurisdictions I tried to point out the variety of possibilities of its application not only in health care law, but also in other areas of law. I have concentrated my attention mainly on argumentation of courts – not only those, who assented, but also to those refused the concept.

The theory is related to liability for damage and issue of proving the casual link, which are both subjects of research of other theories as well – e.g. theory of adequate cause, proximate cause theory and mainly proportional liability issue, which shares some common aspects with loss of chance theory. These theories offer help with evidence in complicated cases, where classical approach to issues of causality would lead to an ineffective and possibly unjust solution. In international context it is interesting to learn how the European Court of Justice applies the theory. With regard to current efforts to identify the common European legal principles I considered it interesting to point out the Principles of European Tort Law and Draft Common Frame of Reference, whose authors also dealt with the loss of chance theory. In conclusion I tried to assess the potential benefits of application of the theory and to find out what application possibilities the Czech law currently offers.