

Abstract

This diploma thesis compares the Czech legal regulation of civil liability for bodily harm caused during medical treatment to the German legislation on the matter. In this case, the German legal regulation can serve as a source of inspiration due to its stable development.

Both legal regulations can be assessed with respect to the rules being preferable either for the harmer or the sufferer. Concerning the provisions within the German law that are preferable for the patient, they cover e.g. the origin of liability for bodily harm caused by all participating persons providing the medical treatment while doing a tortious act, including the direct liability of persons who are “used by the activity”. Due to the broader concept of harm in the German civic law the patient has a right for damages based on a generally defined nonmaterial harm, where the concrete amount of damage is determined by the court. The German legal regulation is preferable and more equitable especially for young injured, in which case the assessment of damages for the salary lost is not based only on the average salary of the sufferer before the harm was caused, but it also reflects the lifetime salary, which the injured could have achieved, had the bodily harm not been caused.

By contrast, some provisions in the German legislation are preferable for the provider of the medical treatment. This covers e.g. the absence of a regulation similar to the Czech § 421a Civil Code. Furthermore, an important difference in the German law is a narrower concept of the damages paid to bereaved. Except for special occasions they do not have right for damages for nonmaterial harm caused in the consequence of the close person’s death. Also the bereaved who were provided with nourishment from the dead person on voluntary basis do not have right (in case of his or her death) for compensation.

Both legislations could approximate in the future as the German civil code presents one of the models for the regulation of liability for damage in the new Czech civil code.